Supreme Court, U.S.
FILED
JAN 2 9 2004
OFFICE OF THE CLERK

(3)

No. 03-167

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

CARLOS DOMINGUEZ BENITEZ

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: AUG. 4, 2003
CERTIORARI GRANTED: DEC. 8, 2003

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NOTICE

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UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA
(SOUTHERN DIVISION)

No. 99-CR-67-ALL

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ BENITEZ, DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
5/14/99	2	REPORT COMMENCING CRIMINAL ACTION as to Carlos Dominguez arrested on 5/13/99 Defendant's date of birth: 2/6/68. [8:99-m-171] (mt) [Entry date 05/20/99]
	* * * * *	
5/14/99	1	COMPLAINT filed against Carlos Dominguez, Marcelino Gomez Benitez, Esteban Barrera-Martinez in violation of 21:841(a)(1). Approved by Magistrate Judge Arthur Nakazato. [8:99-m-171] (mt) [Entry date 05/20/99]

DATE	DOCKET NUMBER	PROCEEDINGS
5/14/99	5	MINUTES OF ARRAIGNMENT ON MAGISTRATE COMPLAINT held before Magistrate Judge Arthur Nakazato as to Carlos Dominguez: Defendant arraigned and states true name as chrgd. First appearance of Carlos Dominguez entered. DFPD Attorney Craig M Wilke present. Bail set at detn. Govt req detn. Req granted. Court orders Carlos Dominguez detained. Defendant committed to the custody of the U. S. Marshal. Preliminary hearing set for 4:30pm on 5/28/99. Post indictment arraignment set for 8:30am on 6/1/99. Dft advised by govt of right to speak to Mexican consulate. Tape No.: SA99-14 [8:99-m-171] (mt) [Entry date 05/20/99] [Edit date 05/20/99]
5/14/99	—	SPANISH INTERPRETER required for Carlos Dominguez. [8:99-m-171] (mt) [Entry date 05/20/99]

DATE	DOCKET NUMBER	PROCEEDINGS
5/14/99	6	NOTICE DIRECTING Defendant To Appear for Preliminary Hearing and for Arraignment on Indictment/ Information filed as to Carlos Dominguez. [8:99-m-171] (mt) [Entry date 05/20/99]
5/14/99	7	NOTICE OF REQUEST FOR DETENTION filed by USA as to Carlos Dominguez. [8:99-m-171] (mt) [Entry date 05/20/99]
5/14/99	8	ORDER OF DETENTION by Magistrate Judge Arthur Nakazato as to Carlos Dominguez. (cc: all counsel) [8:99-m-171] (mt) [Entry date 05/20/99]
5/14/99	9	FINANCIAL AFFIDAVIT filed as to Carlos Dominguez [8:99-m-171] (mt) [Entry date 05/20/99]

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
5/28/99	20	INDICTMENT filed against Carlos Dominguez (1) count(s) 1, 2, Marcelino Gomez-Benitez (2) count(s) 1, 2, Esteban Barrera-Martinez (3) count(s) 1, 2 filed by AUSA Gregory W
5/28/99	21	CASE SUMMARY filed by AUSA Leslie A Swain, attorney for USA, as to Carlos Dominguez. Defendant's date of birth: 2/6/68. (mt) [Entry date 06/10/99]
		* * * * *
5/28/99	24	MEMORANDUM filed by USA as to Carlos Dominguez, Marcelino Gomez Benitez, Esteban Barrera-Martinez. This criminal action, being filed on 5/28/99, was not pending in the U.S. Attorney's Office before 11/2/92, the date on which U.S. District Judge Lourdes G. Baird began receiving criminal matters. (mt) [Entry date 06/10/99]

DATE	DOCKET NUMBER	PROCEEDINGS
5/28/99	25	MEMORANDUM filed by USA as to Carlos Dominguez, Marcelino Gomez Benitez, Esteban Barrera-Martinez. This criminal action, being filed on 5/28/99, was not pending in the U.S. Attorney's Office before 12/22/98, the date on which U.S. District Judge Nora M. Manella began receiving criminal matters. (mt) [Entry date 06/10/99]
6/7/99	26	MINUTES OF POST-INDICTMENT ARRAIGNMENT HEARING held before Magistrate Judge Arthur Nakazato as to Carlos Dominguez, Marcelino Gomez Benitez, Esteban Barrera-Martinez: Dft Esteban Berrera-Martinez was not transported to crt. Randolph Driggs is present to appr spec for Diane Bass. PIA as to dft (3) is contd to 6/14/99 at 10:00am. Carlos Dominguez

DATE	DOCKET NUMBER	PROCEEDINGS
		(1) count(s) 1, 2, Marcelino Gomez Benitez (2) count(s) 1, 2 arraigned and states true name as chrgd. DFPD Attorney Craig Wilke, CJA Randolph Driggs present. Case assigned to Judge Alicemarie H Stotler. Plea not guilty entered by Carlos Dominguez (1) count(s) 1, 2, Marcelino Gomez Benitez (2) count(s) 1, 2. Jury trial set for 10:00am on 7/20/99. Dfts and cnsl are ord to appr. Trial estimate is 2 days. Tape No.: SA99-15 (mt) [Entry date 06/10/99]
6/7/99	27	STATEMENT OF DEFENDANT'S CONSTITUTIONAL RIGHTS filed as to Carlos Dominguez. (mt) [Entry date 06/10/99]
		* * * * *
7/20/99	31	STIPULATION AND ORDER filed by Judge Alicemarie H. Stotler as to Carlos Dominguez, Marcelino Gomez Benitez, Esteban Barrera-Martinez: Re cont of trial date

DATE	DOCKET NUMBER	PROCEEDINGS
		and excludable time periods under speedy trial act; findings; Jury trial contd to 10:00am on 10/19/99. (mt) [Entry date 07/21/99]
7/20/99	32	EXCLUDABLE DELAY FORM as to Carlos Dominguez, Marcelino Gomez Benitez, Esteban Barrera-Martinez (mt) [Entry date 07/21/99]
9/8/99	33	MINUTES OF IN CHAMBERS HEARING held before Judge Alicemarie H. Stotler as to Carlos Dominguez: Order for flg of dft's letter. C/R: n/a (mt) [Entry date 09/15/99]
9/10/99	34	LETTER filed as to Carlos Dominguez by dft (mt) [Entry date 09/15/99]
		* * * * *
10/7/99	36	EX PARTE APPLICATION filed by Carlos Dominguez for order setting status conference Lodged prop ord (mt) [Entry date 10/14/99]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
10/7/99	38	MINUTES OF STATUS CONFERENCE held before Judge Alicemarie H. Stotler as to Carlos Dominguez: Crt discussed w/dft his letter fld 9/8/99 & heard frm both cnsl. Dft's request for different cnsl denied. Trial date to remain. C/R: K Haaland (mt) [Entry date 10/19/99]
		* * * * *
10/7/99	40	ORDER filed by Judge Alicemarie H. Stotler as to Carlos Dominguez: granting ex parte application for order setting status conference [36-1]. (cc: all counsel) (mt) [Entry date 10/19/99]
10/12/99	41	PLEA AGREEMENT filed by USA as to Carlos Dominguez (mt) [Entry date 10/19/99]
10/12/99	42	EX PARTE APPLICATION filed by USA as to Carlos Dominguez, Marcelino Gomez Benitez for order permitting release of grand jury transcript; memo of P&A; decl of cnsl. (mt) [Entry date 10/19/99]

DATE	DOCKET NUMBER	PROCEEDINGS
10/12/99	42	EX PARTE APPLICATION filed by USA as to Carlos Dominguez, Marcelino Gomez Benitez for order permitting release of grand jury transcript; memo of P&A; decl of cnsl. (mt) [Entry date 10/19/99]
		* * * * *
10/13/99	45	PROPOSED VOIR DIRE QUESTIONS filed by USA as to Carlos Dominguez, Marcelino Gomez Benitez (mt) [Entry date 10/19/99]
10/13/99	46	TRIAL MEMORANDUM filed by USA as to Carlos Dominguez, Marcelino Gomez Benitez (mt) [Entry date 10/19/99]
10/13/99	47	PROPOSED JURY INSTRUCTIONS filed by USA as to Carlos Dominguez, Marcelino Gomez Benitez (annotated set). (mt) [Entry date 10/19/99]
10/13/99	48	PROPOSED JURY INSTRUCTIONS filed by USA as to Carlos Dominguez, Marcelino Gomez Benitez (clean set). (mt) [Entry date 10/19/99]

DATE	DOCKET NUMBER	PROCEEDINGS
10/13/99	49	MINUTES OF CHANGE OF PLEA HEARING held before Judge Alicemarie H. Stotler as to Carlos Dominguez: Defendant moves to change plea to the Indictment. Plea of guilty entered by Carlos Dominguez (1) count(s) 1. The Court questions the defendant regarding plea of guilty and finds it knowledgeable and voluntary and orders the plea accepted and entered. The Court refers dft to the Probation Office for investigation and report. Sentencing hearing set for 4:00pm on 1/31/2000. Trial dt of 10/19/99 vacated. Dft states T/N is CARLOS DOMINGUEZ BENITEZ. C/R: K Haaland (mt) [Entry date 10/19/99]
10/14/99	50	NOTICE OF DISCREPANCY AND ORDER by Judge Alicemarie H. Stotler as to Carlos Dominguez Benitez Document ex parte appl; prop ord ordered filed and processed. (mt) [Entry date 10/19/99]

DATE	DOCKET NUMBER	PROCEEDINGS
10/14/99	51	ORDER filed by Judge Alicemarie H. Stotler as to Carlos Dominguez Benitez, Marcelino Gomez Benitez: granting ex parte application for order permitting release of grand jury transcript [42-1] (cc: all counsel) (mt) [Entry date 10/19/99]
		* * * * *
10/14/99	57	AMENDED PLEA AGREEMENT filed by USA as to Carlos Dominguez Benitez (mt) [Entry date 10/19/99]
		* * * * *
1/26/00	62	WITHDRAWAL OF REQUEST TO CONTINUE SENTENCING, POSITION RE: SENTENCING & PERSONAL STATEMENT RE: SENTENCING filed by Carlos Dominguez Benitez (mt) [Entry date 02/07/00]

DATE	DOCKET NUMBER	PROCEEDINGS
1/27/00	63	POSITION RE: SENTENCING FACTORS filed by USA as to Carlos Dominguez Benitez (mt) [Entry date 02/08/00]
	* * * * *	
1/27/00	74	STIPULATION AND ORDER filed by Judge Alicemarie H. Stotler as to Carlos Dominguez Benitez: to cont sentencing to 3/20/00 (mt) [Entry date 03/09/00]
1/31/00	65	MINUTES OF SENTENCING HEARING held before Judge Alicemarie H. Stotler as to Carlos Dominguez Benitez: Purs to dft's request, matter is contd to 3/13/2000 at 3:30pm. C/R: K Haaland (mt) [Entry date 02/14/00]
	* * * * *	
2/2/00	68	MINUTES OF IN CHAMBERS before Judge Alicemarie H. Stotler as to Carlos Dominguez Benitez: Order flg letter of dft. C/R: n/a (mt) [Entry date 02/17/00]

DATE	DOCKET NUMBER	PROCEEDINGS
2/2/00	69	LETTER filed as to Carlos Dominguez Benitez by dft (mt) [Entry date 02/17/00]
	* * * * *	
3/6/00	72	MINUTES OF IN CHAMBERS before Judge Alicemarie H. Stotler as to Carlos Dominguez Benitez: Order that dft's letter to crt shll be filed & served on all cnsl of record. C/R: n/a (mt) [Entry date 03/09/00]
3/6/00	73	LETTER filed as to Carlos Dominguez Benitez by dft (mt) [Entry date 03/09/00]
3/13/00	77	MINUTES OF SENTENCING held before Judge Alicemarie H. Stotler as to Carlos Dominguez Benitez (1) count(s) 1. Dft is sentenced to 120 months. Upon release from impris, placed on supvd release for 5 years under following T/C: Comply w/the r & r of the USPO and GO 318; Comply w/the r & r of the INS; All Fines are waived;

DATE	DOCKET NUMBER	PROCEEDINGS
		Pay $100 S/A, due immed. Crt recommends to BOP that dft be incarcerated in a CA institution. Purs to govt's motn, ct 2 is dism. Court advised of right to appeal. C/R: K Haaland (mt) [Entry date 03/27/00]
3/13/00	77	MINUTES OF SENTENCING held before Judge Alicemarie H. Stotler as to Carlos Dominguez Benitez (1) count(s) 1. Dft is sentenced to 120 months. Upon release from impris, placed on supvd release for 5 years under following T/C: Comply w/the r & r of the USPO and GO 318; Comply w/the r & r of the INS; All Fines are waived; Pay $100 S/A, due immed. Crt recommends to BOP that dft be incarcerated in a CA institution. Purs to govt's motn, ct 2 is dism. Court advised of right to appeal. C/R: K Haaland (mt) [Entry date 03/27/00]

DATE	DOCKET NUMBER	PROCEEDINGS
3/14/00	75	TRANSCRIPT DESIGNATION filed by Carlos Dominguez Benitez for transcript of 10/7/99, 10/13/99, 1/31/00 3/13/00, CR. K. Haaland; referencing. (fvap) [75-1] (app) [Entry date 03/15/00]
3/14/00	79	NOTICE OF APPEAL to USCA filed by Carlos Dominguez Benitez from sen minutes [77-4], filed on: 3/13/00 and entered on: 3/27/00. Fee status: Waived, DFPD; frms gvn TDO. (cc: Craig Wilke, DFPD; Carmen Luege, Miriam Krinsky; AUSA) (fvap) (app) [Entry date 03/30/00]
		* * * * *
3/21/00	78	JUDGMENT AND COMMITMENT issued to U.S. Marshal for Carlos Dominguez Benitez with Statement of Reasons Approved by Judge Alicemarie H. Stotler. Entered on: 3/27/00. (mt) [Entry date 03/27/00]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
4/3/00	80	ORDER FOR TIME SCHEDULE filed as to Carlos Dominguez Benitez for [79-1]. Transcript designation due: 4/20/00; CR transcripts due: 5/22/00; Appellant's briefs & excerpts due: 6/29/00; Appellee's reply brief due: 7/31/00; Appellant's reply brief due by: 8/14/00. (cc: all counsel) (wdc) (app) [Entry date 04/03/00]
	* * * * *	
4/12/00	82	NOTIFICATION by United States Court of Appeals as to Carlos Dominguez Benitez, designating USCA Appeal No. 00-50181 assigned to appeal [79-1]. (pjap) (app) [Entry date 04/12/00]
	* * * * *	
6/30/00	85	RECEIPT for Transcripts of proceedings held on: 10/7/99, 10/13/99, 1/31/00, 3/13/00 C/R: K Haaland (mt) [Entry date 07/05/00]

DATE	DOCKET NUMBER	PROCEEDINGS
6/30/00	—	TRANSCRIPT filed for proceedings held on 10/7/99 as to Carlos Dominguez Benitez. (mt) [Entry date 07/05/00]
6/30/00	—	TRANSCRIPT filed for proceedings held on 10/13/99 as to Carlos Dominguez Benitez. (mt) [Entry date 07/05/00]
6/30/00	—	TRANSCRIPT filed for proceedings held on 1/31/00 as to Carlos Dominguez Benitez. (mt) [Entry date 07/05/00]
6/30/00	—	TRANSCRIPT filed for proceedings held on 3/13/00 as to Carlos Dominguez Benitez. (mt) [Entry date 07/05/00]
7/20/00	86	CERTIFICATE of Record Transmitted to USCA-00-50181 re [79-1] (cc: all counsel) (wdc) (app) [Entry date 07/20/00]
	* * * * *	
11/15/00	89	TRANSCRIPT DESIGNATION filed by Carlos Dominguez Benitez for transcript of 10/7/99 CR: K. Haaland, referencing appeal [82-1] (USCA No.: 00-50181)(ghap) (app) [Entry date 11/15/00]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/29/02	92	RECORD ON APPEAL FORWARDED TO USCA 2 volumes original clerks file, 4 volumes C/R transcripts (00-50181) (pjap) [Entry date 03/29/02]
11/29/0	93	ORDER from USCA the govt's unopposed mot for an ext of time to file a petition for rehrg & suggestion for rehrg en banc is GR. The petition for rehrg & suggestion for rehrg en banc is due in the Clerk's office on or before 1/8/3. (00-50181) (weap) [Entry date 12/19/02]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 00-50181

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ BENITEZ, DEFENDANT

DOCKET ENTRIES

DATE	PROCEEDINGS
4/5/00	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Filed in D.C. on 4/3/00; setting schedule as follows: transcript shall be ordered by 4/20/00 for Carlos Dominguez Benitez; transcript shall be filed by 5/22/00; appellants' briefs, excerpts due by 6/29/00 for Carlos Dominguez Benitez; appellees' brief due 7/31/00 for USA; appellants' reply brief due by 8/14/00 for Carlos Dominguez Benitez. (RT required: y) (Sentence imp 120 months) [00-50181] (pg)
4/28/00	Rcvd notice of appearance of Emily S. Uhrig (Withdrew as counsel: attorney Craig Wilke for Carlos Dominguez Benitez [00-50181] (wp)

DATE	PROCEEDINGS
6/5/00	Filed notice of Appellant and deputy clerk order: (Deputy Clerk: LKK) The court is in receipt of appellant's notice of Court Reporter Kathy Haaland's default. (See Case file for complete text). Within 14 days from the entry of this order, Court Reporter Haaland shall either file the transcripts, file a motion for extension of time to do so, or inform the court in writing of any barriers to transcript production. (See case file for complete text) Appellant shall inform this court by letter within 28 days from entry of this order if the original transcripts have not been filed in the district court. In the absence of any further communication regarding an incomplete record, briefing shall proceed as follows: the opening brief is due July 31, 2000; the answering brief is due August 30, 2000, and the optional reply brief is due 14 days from service of the answering brief. This order shall be provided to the reporter at the district court; a copy of this order and appellant's motion shall be provided to Court Reporter Supervisor Dawn Bullock. (Motion recvd 5/30/00) [00-50181] (kc)

DATE	PROCEEDINGS
7/17/00	Filed Motion of Appellant and Order (Deputy Clerk: CB) The clerk is in receipt of aplt's notice of reporter default. The dc docket reflects that the transcripts were filed June 30, 2000. The briefing schedule is as follows: the opening brief and excerpts of record are due Aug 9, 2000, the answering brief is due Sept 8, 2000, and the optional reply brief is due 14 days from service of the answering brief. Aplt is reminded that a copy of all submissions to this court must be provided to opposing counsel; all submissions must include a statement that aplt has done so. (cite) A copy of the June 30, 2000 letter shall be provided to the Govt along with this order. (Motion recvd 7/3/00) [00-50181] (af)
7/21/00	Filed certificate of record on appeal RT filed in DC 6/30/00 [00-50181] (pg)
8/2/00	Filed motion of appellant and order (Dep. Clk./CB): Appellant's request to modify briefing is construed as a motion for an extension of time to file the opening brief and excerpts of record. So construed, the motion is granted. The briefing schedule is as follows: the opening brief and excerpts of record are due Sept. 20, 2000;

DATE	PROCEEDINGS
	the answering brief is due Oct. 20, 2000 and the optional reply brief is due 14 days from service of the answering brief. In view of the lengthy extension of time granted by way of this order, any further request for an extension of time to file this brief is disfavored. (Motion recvd 07/31/00) [00-50181] (je)
9/14/00	Filed Emily S. Uhrig's motion to withdraw as counsel under Cir. R. 4-1(c)(3). served on 9/12/00 MOATT (vt)
9/25/00	Received Appellant Carlos Dominguez Benitez's addendum exhibit) to attorney motion to withdraw counsel [3990750-1], served on 9/22/00 (MOATT) [00-50181] (ft)
10/10/00	Filed order (Appellate Commissioner) The motion of the FPD to withdraw as counsel for aplt is granted. Aplt's motion for appointment of csl is granted. Csl will be appointed by separate order. The clerk shall serve a copy of this order by fax on Maria Stratton who will locate appointed csl. New csl shall dsgn the RTs by 11/16/00. The RTs are due 12/18/00. The appellants' opening brief, excerpts due 1/29/01; appellees' brief due 2/28/01; the reply brief is due 14 days from the service of the answering brief. (MOTIONS) [00-50181] (wp)

DATE	PROCEEDINGS
10/22/00	Rec'd copy of DC order (CJA-20) filed on 10/10/00 appointing Myra Mossman as csl of record for aplt. [00-50181] (jr)
1/17/01	14 day oral extension by phone of time to file Appellant brief. [00-50181] appellants' brief due 2/12/01; appellees' brief due 3/14/01; optional reply brief due 14 days from service of answering brief (cb)
2/12/01	Filed original and 15 copies Appellant's opening brief (Informal: n) 38 pages and five excerpts of record in 1 volume; and 3 excerpts of record UNDER SEAL; served on 2/9/01. [00-50181] (je)
3/13/01	14 day oral extension by phone of time to file Appellee's brief. [00-50181] appellees' brief due 3/28/01; the optional reply brief is due 14 days from service of the answering brief. (cg)
3/30/01	Filed original and 15 copies appellee's 39 page brief, 0 excerpts of record; served on 3/28/01. [00-50181] (je)
3/30/01	Filed pre-sentencing report UNDER SEAL. [00-50181] (je)
4/13/01	Received Myra Mossman's, for Appellant Carlos Dominguez Benitez, letter dated 04/10/01. [MoATT] [00-50181] (je)

DATE	PROCEEDINGS
4/18/01	Received Myra Mossman for Appellant Carlos Dominguez Benitez letter dated 04/15/01 re: correction to letter of 04/10/01. [MoATT] [00-50181] (je)
5/2/01	Filed order (Deputy Clerk: cb) Applt's letter motion to stay appellate proceedings is granted in part. Proceedings are stayed for 90 days from the date of this order. At or prior to expiration of the stay, defendant shall inform the court as to the status of the Supreme Court's review and shall, if appropriate, renew the request for supplemental briefing. If defendant fails to respond to this order in a timely fashion, the stay will be lifted without further notice. [00-50181] (je)
6/11/01	Filed Myra Mossman's CJA voucher and motion to allow filing of interim claim under CJA ; served on 5/16/01. (Commissioner) (dr)
7/31/01	Filed order (Appellate Commissioner) The motion of aplt's appt'd csl, Myra D. Mossman, for interim pymt under the CJA is GRANTED. The vch has been certified for one-half the amt. claimed for services, plus all amts claimed for expenses. The award is without prejudice to csl submitting a final vch claiming the

DATE	PROCEEDINGS
	remaining amt. Within 45 days after the final disposition of the case in this court or after the filing of a petition for a writ of cert., whichever is later, csl shall submit a final vch seeking reimbursement of expenses and pymt of any further compensation sought. See 9th Cir. R. 4-1(e). (served) [00-50181] (dr)
9/16/01	Calendar check performed [00-50181] (aw)
10/2/01	Calendar materials being prepared. [00-50181] [00-50181](aw)
10/9/01	CALENDARED: PASA Dec 5 2001 9:00 am Courtroom 1 [00-50181] (aw)
11/13/01	Rcvd original and 15 copies Applt's supplemental brief of 6 pages; served on 11/6/01 deficient: motion pending/Panel. [Faxed Panel] [00-50181] (je)
11/13/01	Rcvd Myra Mossman for Appellant Carlos Dominguez Benitez letter dated 11/06/01 re: correction to page 36 of opening br. [RECORDS] [00-50181] (je)
11/15/01	Filed Applt's FAXED motion to file supplemental brief; served 11/15/01. [Faxed Panel] [00-50181] [00-50181] (je) [*sic*]
11/15/01	Filed Appellee's response opposing appellant's motion to file supplemental brief; served on 11/14/01. [Faxed Panel] [00-50181] (je)

DATE	PROCEEDINGS
11/19/01	Rcvd Myra Mossman for Appellant Carlos Dominguez Benitez FAXED ltr dated 11/17/01 re: error in mt filed 11/15/01. [Faxed Panel] [00-50181] (je)
11/19/01	Filed order (Deputy Clerk: pi) Defendant Benitez's Motion to File a Supplemental Brief is DENIED. (Served to Csls) [00-50181] (pi)
11/19/01	Filed HARDCOPY Applt's motion to file supplemental brief; served 11/15/01. [casefile] [00-50181] (je)
11/21/01	Rcvd HARDCOPY Myra Mossman for Appellant Carlos Dominguez Benitez letter dated 11/17/01 re: error in mt filed 11/15/01. [casefile] [00-50181] (je)
11/23/01	Rcvd Myra Mossman for Appellant Carlos Dominguez Benitez letter dated 11/21/01 re: clarification of 11/19/01 Ct. Order. [Faxed Panel] [00-50181] (je)
11/27/01	Received Faxed copy Myra Mossman for Appellant Carlos Dominguez Benitez letter dated 11/27/01 re: enclosing new authority ltr br; proof of service and correction ltr. [Faxed Panel] [00-50181] (je)

DATE	PROCEEDINGS
11/29/01	Received Hardcopy Myra Mossman for Appellant Carlos Dominguez Benitez letter dated 11/27/01 re: enclosing original correction ltr. [casefile/previously faxed Panel the faxed copy rcvd 11/27/0] [00-50181] (je)
11/29/01	Received Hardcopy Myra Mossman for Appellant Carlos Dominguez Benitez letter dated 11/26/01 re: enclosing new authority ltr br; proof of service and correction ltr. [previously faxed Panel/ casefile] [00-50181] (je)
12/5/01	ARGUED AND SUBMITTED TO James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN [00-50181] (bg)
1/29/02	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN): Mandate shall be stayed pending the United States Supreme Court's decision in United States v. Vonn, (cite). [00-50181] (je)
1/29/02	FILED MEMORANDUM DISPOSITION: REVERSED IN PART, AFFIRMED IN PART AND REMANDED. (Terminated on the Merits after Oral Hearing; Reversed; Written, Unsigned, Unpublished. James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN) FILED AND ENTERED JUDGMENT. [00-50181] (je)

DATE	PROCEEDINGS
2/25/02	Filed Myra Mossman's motion to withdraw as counsel; served 02/19/02. [Panel] (je)
3/13/02	Rcvd Applt's consent statement re: supporting attorney motion to withdraw counsel; no service provided. [Panel] [00-50181] (je)
3/14/02	Filed USA motion to extend time to file petition for rehearing; served on 3/13/02. [Panel] (je)
3/19/02	Supplemental Criminal Justice Act voucher sent to Myra Mossman for Appellant Carlos Dominguez Benitez [00-50181] (dr)
3/20/02	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN) Carlos Dominguez Benitez's csl's mtn to withdraw made pursuant to Cir. R. 4.1(d) is DENIED. (PHONED OUT: 10:00 a.m.) [00-50181] (rc)
3/20/02	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN) the memorandum disposition filed 1/29/02, is WITHDRAWN. Each party shall file a supplemental brief by 4/12/02, addressing the effect of US v Vonn, U.S. 122 S.Ct. 1043 (2002) on this case. (PHONED OUT: 10:00 a.m.) [00-50181] (rc)

DATE	PROCEEDINGS
3/25/02	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN) Aple's mtn for an ext of time to file a petition for rehearing is DENIED. The mtn is premature because the parties have been ordered to file suppl briefs. (PHONED OUT: 12:40 p.m.) [4385534-1] [00-50181] (rc)
4/1/02	FILED CERTIFIED RECORD ON APPEAL: 2 CLERK'S RECORDS & 4 REPORTER'S TRANSCRIPTS. (ORIGINAL) [00-50181] (sd)
4/12/02	Filed original and 15 copies Appellant Carlos Dominguez Benitez supplemental brief of 8 pages, served on 4/10/02. [Panel] [00-50181] (je)
4/16/02	Filed original and 15 copies Appellee USA supplemental brief of 15 pages, served on 4/12/02. [Panel] [00-50181] (je)
11/4/02	Filed USA additional citations, served on 10/31/02. [Panel] [00-50181] (je)
11/25/02	MEMORANDUM OPINION FILED (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN): AFFIRMED [00-50181] (je)
11/25/02	OPINION FILED (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN): REVERSED and REMANDED. [00-50181] (je)

DATE	PROCEEDINGS
11/27/02	Filed motion and order (Deputy Clerk: cp) The Government's unopposed motion for extension of time to file petition for rehearing and rehearing en banc is granted. The petition and or rehearing en banc is due in the Clerk's office on or before 1/8/03. (Motion recvd 11/26/02) [00-50181] (ca)
12/24/02	Filed appellee's unopposed mtn for ex.tm.f pfr and pfr en banc; declaration of Elana Shavit Atrson; served 12/23/02. [author] (je)
12/31/02	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN,): Plntf-aple's motion for ext of time to file petition for rehearing and petition for rehearing en banc up to and including 1/22/03 is GRANTED. [4615802-1] [00-50181] [00-50181] (hh)
1/23/03	Filed original and 50 copies Appellee's petition for panel rehearing and petition for rehearing en banc in 19 pages; served 01/21/03. [Panel and All Active Judges] [00-50181] (je)
2/14/03	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN,): Aplt is directed to file a response to Aple's pet for rhrg and pet for rhrg en banc filed with this ct on 1/23/03.

DATE	PROCEEDINGS
	The response shall be filed w/i 21 days of the date of this order, and the aplt will provide this ct with 50 copies. [00-50181] (gail)
2/28/03	Filed Appellant Carlos Dominguez Benitez's unopposed motion to extend time to file petition for rehearing en banc; served 02/25/03. [author] [00-50181] (je)
3/4/03	Received Myra Mossman for Appellant Carlos Dominguez Benitez letter dated 03/03/03 re: duplicate mtn for ex.tm.f pfr; author has been served with original mtn; casefile] [00-50181] (je)
3/11/03	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN): Defendant-Appellant's mtn for 14-day ex.tm.f response and opp to pfr and pfr en banc is granted. Defendant-Appellant's response is due on or before March 20, 2003. [00-50181] (je)
3/19/03	Filed Appellant Carlos Dominguez Benitez's response and opposition to Appellee's petition for rhrg en banc; in 15 pages; served 03/17/03. [Panel and All Active Judges] [00-50181] (je)

DATE	PROCEEDINGS
5/6/03	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN): Judge Browing and Judge Reinhardt have voted to deny the pfr. Judge Reinhardt has voted to deny the pfr en banc and Judge Browning so recommends. Judge Tallman has voted to grant the petition for pnl rhrg and rhrg en banc. The full ct has been advised of the pfr en banc and no judge has requested a vote on whether to rhr the matter en banc. (cite) The petition for pnl rhrg and the petition for rhrg en banc are denied. [00-50181] (je)
5/12/03	Filed appellee's mtn to stay mdt pending consideration of filing petition for writ of cert; w/declaration; served 05/09/03. [author] (je)
5/16/03	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN): Plaintiff-appellee's mtn to stay the mdt pending consideration of filing petition for writ of cert is GRANTED. The mdt shall be stayed until Aug. 11, 2003. [00-50181] (je)
5/16/03	Filed Appellant Carlos Dominguez Benitez response opposing appellee's motion to stay the mandate [4735318-1] served on 5/15/03. [author] [00-50181] (je)

DATE	PROCEEDINGS
5/20/03	Received Nancy Johnson's corrected proof of service for mtn to stay mandate; served 05/19/03. [author] [00-50181] (je)
5/23/03	Filed Applt's unopposed mtn for recon of the order to stay mdt pending consideration of filing of petition for writ of cert; served 05/21/03. [Panel] [00-50181] (je)
6/2/03	Filed order (James R. BROWNING, Stephen R. REINHARDT, Richard C. TALLMAN): Defendant-Appellant's "Motion for Reconsideration of the Order to Stay Mandate Pending Consideration of Filing Petition for Writ of Certiorari" is DENIED. [00-50181] (je)
8/5/03	Supplemental Criminal Justice Act voucher sent to Myra Mossman for Appellant Carlos Dominguez Benitez [00-50181] (dr)
8/8/03	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 03-167 filed on 08/04/03. [served Panel] [00-50181] (je)
8/15/03	Filed appellee's mtn to extend stay of mdt pending dispo of writ of cert; w/ declaration; served 08/14/03. [author] (je)

DATE	PROCEEDINGS
8/19/03	Filed order (James R. BROWNING): The govt's "Motion toExtend Stay of Mandate Pending Dispositon of Petition for Writ of Certiorari" is granted. The mandate shall be stayed until final dispo of this matter by the Supreme Ct. [00-50181] (je)

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
February 1999 Grand Jury

SA CR 99-67 AHS

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ, MARCELINO GOMEZ-BENITEZ, AND ESTEBAN BARRERA-MARTINEZ, DEFENDANTS

INDICTMENT

[21 U.S.C. § 846: Conspiracy to Possess with Intent to Distribute Methamphetamine; 21 U.S.C. § 841(a)(1): Possession with Intent to Distribute Methamphetamine]

The Grand Jury charges :

COUNT ONE

[21 U.S.C. § 846]

A. OBJECT OF THE CONSPIRACY

Beginning on a date unknown and continuing to on or about May 12, 1999, in Orange County, within the Central District of California, and elsewhere, defendants CARLOS DOMINGUEZ ("DOMINGUEZ), MARCELINO GOMEZ-BENITEZ ("BENITEZ"), and ESTEBAN BARRERA-MARTINEZ ("MARTINEZ"), and others known and unknown to the Grand Jury , knowingly and

intentionally conspired and agreed with each other to possess with intent to distribute more than 500 grams of methamphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

B. MEANS OF THE CONSPIRACY

The object of the conspiracy was to be accomplished in substance as follows:

1. Defendant DOMINGUEZ would arrange methamphetamine transactions with potential buyers.

2. Defendant BENITEZ would supply methamphetamine for the transactions.

3. Defendants DOMINGUEZ, BENITEZ, and MARTINEZ would deliver the methamphetamine to the buyer or their representatives.

C. OVERT ACTS

In furtherance of the conspiracy and to accomplish the object of the conspiracy, defendants committed the following overt acts, among others, within the Central District of California and elsewhere:

1. On or about May 13, 1999, in a recorded telephone conversation, defendant DOMINGUEZ arranged to meet a confidential informant (the "CI") at a Norm's restaurant in Anaheim, California, for the purpose of selling the CI ten pounds of methamphetamine.

2. On or about May 13, 1999, defendant DOMINGUEZ met with the CI at the Norm's restaurant in Anaheim, California, and delivered a sample of methamphetamine.

3. On May 13, 1999, defendant DOMINGUEZ, BENITEZ, and MARTINEZ returned to the Norm's restaurant in a Toyota Tersel driven by defendant BENITEZ.

4. On or about May 13, 1999, defendants DOMINGUEZ and MARTINEZ gave the CI a bag containing approximately three pounds of a mixture or substance containing a detectable amount of methamphetamine.

COUNT TWO

[21 U.S.C. § 841(a) (1)]

On or about May 13, 1999, in Orange County, within the Central District of California, defendants CARLOS DOMINGUEZ, MARCELINO GOMEZ-BENITEZ, and ESTEBAN BARRERA-MARTINEZ knowingly and intentionally possessed with intent to distribute approximately 1,391 grams of a mixture or substance containing a detectable amount of methamphetamine, a schedule II controlled substance.

A TRUE BILL

_____

Foreperson

ALEJANDRO N. MAYORKAS
United States Attorney

GEORGE S. CARDONA
Assistant United States Attorney
Chief, Criminal Division

/s/ GREGORY W. JESSNER
GREGORY W. JESSNER
Assistant United States Attorney
Chief, Criminal Complaints

SHARON MCCASLIN
Assistant United States Attorney
Deputy Chief, Criminal Complaints

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

CRIMINAL MINUTES - GENERAL

Case No.: SA CR 99-67 AHS Date: September 8, 1999

DOCKET ENTRY:

[I hereby certify that this document was served by first class mail or Government messenger service, postage prepaid, to all counsel (or parties) at their respective most recent address of record in this action on this date.]
Date: 9/10/99 DeputyClerk[signature illegible]

PRESENT: HON. ALICEMARIE H. STOTLER, JUDGE

Not Present	Not Present	Not Present
Deputy Clerk	Court Reporter	Asst. U.S. Atty.

U.S.A v. (DEFENDANTS LISTED BELOW)

(1) Carlos Dominguez
not present x custody __ bond

ATTORNEYS FOR DEFENDANTS

(1) Craig Wilke, DFPD
__ present x appointed

PROCEEDINGS:

(In Chambers) ORDER FOR FILING OF DEFENDANT'S LETTER

Defendant's letter to the Court received in chambers on September 8, 1999, is hereby ordered filed.

The Clerk is directed to serve this minute order and a copy of defendant's letter on all counsel of record. A copy of the minute order only shall be served on defendant at his last known place of incarceration.

[Received: Sept. 8, 1999]

Dear Honor, Alice Marie Stotler.

The reason I'm bothering you so, is because I Carlos Dominguez Benitez have as a lawyer Craig wilke and I want to express wth all respect that I feel very unsatified with the presentations Craig wilke has presented.

My intentions with no means of disrespect are to ask you if possible, you may issue me a new lawyer. I am uncomfortable with Mr. Wilke's decision of incouragement having me sign a deal that I do not feel appropriate.

Your Honor Alice Marie Stotler I have comitted a crime for which I am accepting responsibility but I ask of you to please reconcider my case to less time. I feel that the time I'm facing will distroy my life and my families life. I have four children in my family I support, and are paying the consequences.

Your Honor Alice Stotler with all respect at heart I close this letter with this only oportunity.

Sincerely,

Carlos Dominguez.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. SA CR 99-67-AHS

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ, DEFENDANT

[Filed: Oct. 7, 1999]

EX PARTE APPLICATION FOR ORDER SETTING STATUS CONFERENCE

Defendant CARLOS DOMINGUEZ, by and through his attorney of record, Deputy Federal Public Defender Craig Wilke, hereby applies for an order setting a status conference for Friday, October 8, 1999, at time convenient to the Court, or as soon thereafter as is convenient to the Court. This application is based on the attached declaration of Craig Wilke and the files and records in this case.

Respectfully Submitted,

MARIA E. STRATTON
Federal Public Defender

Dated: October 7, 1999

By: /s/ CRAIG WILKE
CRAIG WILKE
Deputy Federal
Public Defender

DECLARATION OF CRAIG WILKE

I, Craig Wilke, hereby state and declare the following:

1. I am a Deputy Federal Public Defender for the Central District of California. I have been appointed to represent Carlos Dominguez.

2. Mr. Dominguez is charged with conspiracy and possession with intent to distribute approximately 1.4 kilograms of methamphetamine. Trial is set for October 19, 1999.

3. Mr. Dominguez has previously asked the Court in writing to appoint a new attorney for him. On October 6, 1999, Mr. Dominguez declined to discuss his case with me and requested that he be allowed to speak to the Court directly.

4. On October 7, 1999, I advised Assistant United States Attorney Carmen Luege that I intended to request an immediate status conference. Ms. Luege had no objection to this request and stated that she was available on Friday, October 8, 1999, or Tuesday, October 12, 1999, at any time convenient to the Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 7, 1999 /s/ CRAIG WILKE
CRAIG WILKE

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SA CR 99-67-AHS

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ, DEFENDANT

HONORABLE ALICEMARIE H. STOTLER,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Santa Ana, California
Thursday, October 7, 1999

APPEARANCES

FOR THE PLAINTIFF:

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CARMEN R. LUEGE
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FOR THE DEFENDANT:

CRAIG WILKE
Deputy Federal Public Defender
411 West Fourth Street
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Santa Ana, California 92701
(714) 338-4500

[5]

THE CLERK: Item number 2, SA CR 99-67-AHS, United States of America vs. Carlos Dominguez.

Counsel, your appearances, please.

MS. LUEGE: Good afternoon, your Honor.

Carmen Luege on behalf of the United States.

THE COURT: Thank you.

MR. WILKE: Good afternoon, your Honor.

Craig Wilke on behalf of Carlos Dominguez who is present, in custody, and being assisted by a Spanish interpreter.

I apologize for the delay. I've been in Judge Edwards' courtroom.

THE INTERPRETER: Good afternoon, your Honor.

I'm Elisa Vasquez, Spanish interpreter.

THE COURT: Thank you.

This matter was added to the Court's calendar in an effort to accommodate the request of defense counsel with regard to permitting defendant to be heard directly.

The Court has reviewed the minute order of September 8th, which had attached to it the letter received from Mr. Carlos Dominguez. And that letter is before me now. And I assume it is in connection with that, as well as what Mr. Wilke has informed us, that brings the matter to [6] the Court today.

Mr. Dominguez, I invite you to make a statement to the Court if that continues to be your wish. I do want you to know that this is a public hearing, that you should be careful with respect to anything you discuss

with the Court that pertains to the charges against you or your confidential communications with your attorney.

As I review the letter that was submitted to us, you were concerned with a presentation made to you, and I can only draw certain inferences in connection with that particular statement. Please feel free, however, to make the statement, or statements, that you feel are necessary in connection with your case or representation, as you wish.

THE DEFENDANT: The only thing that I was looking for when I made that petition, more than anything I wanted you to look for an opportunity—

THE COURT: Excuse me. Could you move that microphone closer to the interpreter please, so we can hear from the interpreter.

Once again, please start.

THE DEFENDANT: What I was looking for, for the change of attorneys because I am not satisfied with the representation. I am not satisfied and I'm not happy with the representation, because I don't know, actually I'm not familiar with the Articles of the Constitution, but I believe I [7] have been treated unjustly.

The only thing that I am asking for is a better opportunity, a better deal. I have a family to support. The only thing I'm looking for is for a better deal.

THE COURT: A better deal sounds to me as though you are talking about a disposition of your case other than trial.

Is that what you are referring to?

THE DEFENDANT: Yes. At no time have I decided to go to any trial.

THE COURT: I want you to understand that it is entirely up to you whether you have a trial and entirely up to you to have an attorney represent you, either at trial or to negotiate the case short of a trial.

The Court can not be involved with any of your plea negotiations. As a matter of law, the judges of this court and every court are precluded from being involved. I may not, therefore, ask you questions about, quote, "a better deal." On the other hand, the Court needs to be concerned with the ability of you and your attorney to conduct this case—whether for trial or negotiations short of trial—in a professional, well informed manner.

What you are telling me so far is not pertaining to you and your attorney's ability to handle the case, either for trial or for disposition. I can infer from what [8] you wrote to me that whatever it was that your attorney presented to you was not acceptable to you.

This does not reflect badly on your attorney. It has everything to do with what the prosecutor may have discussed with your attorney and your attorney brought the matter, as he is required to do, to your attention for consideration.

Does this explanation make sense to you?

THE DEFENDANT: Yes.

The only thing that I also—in other words, we haven't been able to reach any agreement either.

THE COURT: "We," meaning whom?

THE DEFENDANT: With my attorney, my defender.

The communication that we have doesn't—our interaction, the way he exposes the case is not—in other words, I don't know how to explain it. It's too— it's too complicated.

THE COURT: Why don't you take a seat for a moment.

(The defendant complies.)

THE COURT: Criminal cases in the courtroom tend to be complicated. So I accept your statement in that regard. Nonetheless you must understand my concern with trying to find out discreetly, carefully, what it is that may be a problem, if there is any problem, between you and [9] your attorney.

Mr. Wilke, I know that puts you in a difficult position, but I feel the Court must call upon you for any insight that you feel you can fairly and safely offer consistent with your duties as a defender to this client.

MR. WILKE: Thank you, your Honor.

I think the only thing that I can offer, which I think I put in my application for today's hearing, was that as of yesterday Mr. Dominguez declined any further communications.

THE COURT: And this was obviously your calling on him at his place of incarceration?

MR. WILKE: That's correct, your Honor.

I did actually meet with him, but we had a brief, five-minute conversation and we tried to get into the substance of what was going on, and he declined to discuss it with me.

THE COURT: I see. Thank you.

So at this point, I have information that it is on your side of this discussion, Mr. Dominguez, that there is not communication. Before I hear from you again, if you wish to speak, let me ask the Assistant U.S. Attorney for any insight that she may be in a position to offer, again, consistent with her duties as the prosecutor in the case, to help the Court better understand the posture of the matter.

[10]

MS. LUEGE: From our perspective, from the government's perspective, the concern that we have is that we have a trial date coming up on October 19th, which is at this point less than two weeks away.

And we sort of have no movement in the case at all, either in terms of negotiations, in terms of a trial continuance, in terms of getting ready for a trial, because Mr. Wilke has expressed to me the problem he's having. So we're kind of in a situation where we can't resolve any matter. It's kind of like the case is paralyzed, which is a bad thing for the government since, from our perspective, we have to get ready for this trial, if nobody can tell me what is it that we're doing.

I can tell the Court that I spoke with Mr. Driggs who represents the other defendant in this case, and that Mr. Driggs is out of town and on vacation, but that he was interested in getting a continuance of the trial. And I had discussed that continuance with Mr. Wilke, and actually Mr. Wilke also had explained to me that he had a basis to ask for a continuance and needed a continuance of this trial.

We had checked with the clerk of the Court and had informally discussed December 14th as a trial date that accommodated the remaining parties. I had drafted a

stipulation to attempt to set a continuance of this case, I [11] had sent that to Mr. Driggs, who indeed signed the stipulation to continue the trial date.

And then it was in my pursuit of Mr. Wilke this morning saying, "I haven't heard from you," that it became clear that we sort of have the situation where the case is paralyzed because now one counsel wants a continuance, but this side of the table, it's kind of paralyzed because we can't move forward in any direction. And so, from my perspective, I sort of would like it to be resolved.

THE COURT: So as far as the government is concerned, the case can go to trial on October 19th, as scheduled?

MS. LUEGE: If we have to be ready, we will be ready, yes.

At this point, we're still—I'm sending out transcripts to be redone and I'm doing things, assuming that at this point it looks like we're going to trial. But, frankly, I would like a resolution.

The government has no objection to a continuance. And indeed, it appears from my conversation with both Mr. Wilke and Mr. Driggs that the defense is interested in a continuance. And I would have no objection to that.

THE COURT: And, of course, the Court has nothing before it now to suggest that anybody is asking for a continuance, albeit I accept counsel's representation that [12] such has been discussed and in fact something has been written down so as to reflect on the third defendant in this case.

I guess, I need to find out whether or not Mr. Wilke is of the frame of mind, knowing what he knows about the case and having met with a lack of communication, whether he's ready to try the case for Mr. Dominguez on October the 19th.

Before I turn back to him and Mr. Dominguez, is there anything else that government counsel cares to add?

MS. LUEGE: No, nothing else, your Honor.

THE COURT: All right.

MS. LUEGE: Thank you.

THE COURT: Maybe it would behoove us to hear from you, Mr. Wilke, on that score before I inquire of Mr. Dominguez, who is obviously receiving all of this information through the interpreter.

MR. WILKE: Your Honor, there is additional discovery that the Assistant United States Attorney has indicated would be provided prior to trial. We haven't received that yet. That would be the only thing holding me up and not being able to try the case.

However, Mr. Dominguez, as he has indicated here in court, doesn't want a trial. And I have represented that to Ms. Luege on several occasions.

[13]

So to the extent that the government somehow wouldn't be ready on the 19th, it would be largely based on representations by me to Ms. Luege. I've told her all along there won't be a trial on the 19th based on my client's representations that he doesn't want a trial.

And I do not have another trial set for that date, however, and I suppose if there would be a trial on that

date, I would be here and be ready to try it. Nobody seems to be asking for one, though.

THE COURT: I appreciate that.

And I think Mr. Dominguez needs to be told by the Court that there's nothing that the judge of the court can do with regard to making for happier, or better, or improved negotiations.

As I tried to explain at the outset, that is something that is off limits for the judges of the court. It is something that is up to you and your counsel, but significant responsibility in that regard rests with the prosecutor in the case. And whatever that person elects to offer is essentially what is presented, and there is not a great deal of choice.

What I am trying to say is that when there is a criminal charge, either there is a trial and the jury decides whether the accused person, yourself, is guilty or innocent, or there is some kind of negotiation short of [14] trial. I just need to make sure that you understand what the choices are.

But so far as I can discern, there is nothing inappropriate, unprofessional, incommunicative about the approach from your current appointed counsel. I have made the assumption that you're not in a position at this time to go out and hire your own counsel, and yet you want to have the assistance of counsel.

Since I am not in a position to identify anything amiss in your relationship and it is your choice not to speak to your attorney, I feel it is inappropriate for the Court to appoint a different lawyer to represent you. I am not seeing that there are currently grounds to somehow remove this attorney from representing you or handling your case.

In light of those observations, sir, I invite any additional information to be given to the Court that you feel should be conveyed.

THE DEFENDANT: Well, based on the information you have given me, I don't have anything else to add.

THE COURT: Very well then.

At this point, sir, what I intend to do is, have your case pend before the Court for a trial on October the 19th. This is not to say that you and your attorney may not consider and discuss with the prosecutor whether there [15] should be a resetting of this trial in light of further information to be provided to Mr. Wilke, and this is not to say that you won't be forced to a trial on October 19th.

Again, because there are other parties in this case, the Court is not in a position to resolve all of these issues. I am telling you today's present status. Obviously, it is entirely up to you as to whether or not you want the assistance of your attorney. But at this point, I must point out to you that having competent and capable representation, as you now have, is obviously in your best interest. I invite you to consider these thoughts as well while the matter continues to pend.

Unless the parties have anything additional for the Court to address today, we will go ahead and take our adjournment.

Mr. Wilke, anything else?

MR. WILKE: May I have just a moment, your Honor?

Nothing further, your Honor.

THE COURT: Ms. Luege?

MS. LUEGE: Nothing further, your Honor.

THE COURT: All right. That concludes proceedings for today.

We stand adjourned.

(Proceedings adjourned.)

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SA CR 99-67-AHS

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ, DEFENDANT

HONORABLE ALICEMARIE H. STOTLER,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Santa Ana, California
Wednesday, October 13, 1999

APPEARANCES

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FOR THE DEFENDANT:

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[4]

THE CLERK: Calling item number 2, SA CR 99-67-AHS, United States vs. Carlos Dominguez.

Counsel, your appearances, please.

MS. LUEGE: Good afternoon, your Honor.

Carmen Luege on behalf of the United States.

THE COURT: Thank you.

MR. WILKE: Good afternoon, your Honor.

Craig Wilke on behalf of Carlos Dominguez who is present, in custody, and being assisted by a Spanish interpreter.

THE COURT: Thank you.

THE INTERPRETER: Good afternoon, your Honor.

Irma Lourdes Garcia, Spanish interpreter.

THE COURT: Thank you.

We have the matter of a change of plea before us in the case of Mr. Dominguez.

Now, this is the case that I met with you about very recently, and at the time Mr. Dominguez had indicated to us his concern for a, quote, "better deal." And I'm not at all certain that the parties have gone back, but it looks like they may have gone back for some kind of renegotiations.

Mr. Dominguez, I need to have you understand I can [5] not take your guilty plea unless you are making a free and voluntary guilty plea. To that end, I need to ask you a series of questions to make certain that you understand all of your rights, what the penalties are that you face, and that you understand that your plea

agreement is not binding on the Court when it comes time for sentencing.

At this point, do you represent to the Court that you have had enough time to discuss your case completely with your attorney?

THE DEFENDANT: Yes.

THE COURT: I'm going to proceed to ask you questions, but I wish to remind you now that if at any time during the course of my questioning you would like some more time to discuss your case privately with your attorney, you need to tell me of that fact right away.

Will you do that?

THE DEFENDANT: Yes.

THE COURT: And if you do not understand something I'm asking of you, please tell me that so I can clarify my question.

Will you do that as well?

THE DEFENDANT: Yes.

THE COURT: And if in the course of these proceedings you simply change your mind about pleading guilty, then you must tell me that too, because we have a [6] date reserved for your trial, which is October 19th.

Do you understand that?

THE DEFENDANT: I do.

THE COURT: I'm also going to ask that the clerk place you under oath, which means you are sworn in as a witness.

You are giving up the right to remain silent, the privilege against self-incrimination, when you take the

oath, and you promise to be truthful. If you make a false statement after you have been sworn in, you can be separately prosecuted for perjury or making a false statement.

Do you understand the things I am telling you?

THE DEFENDANT: I understand.

THE COURT: And are you willing to be sworn in as a witness and give up the right to remain silent and answer my questions truthfully?

THE DEFENDANT: Yes.

THE COURT: I will ask you to please face the clerk, raise your right hand, stand to be sworn.

(Defendant Sworn.)

THE COURT: Let me ask you—you may be seated.

Mr. Wilke, is that microphone working?

MR. WILKE: It is, your Honor.

Would you like it by the interpreter?

[7]

THE COURT: Please.

Please, state your full, true, legal name for me.

THE DEFENDANT: Carlos Dominguez-Benitez.

THE COURT: Can you spell the last name again for me again, please.

THE DEFENDANT: Carlos, C-a-r-l-o-s; Dominguez, D-o-m-i-n-g-u-e-z; Benitez, B-e-n- i-t-e-z.

THE COURT: Thank you.

What is your date of birth?

THE DEFENDANT: Six twelve sixty-eight.

THE COURT: Please, state the extent of your formal education or schooling.

THE DEFENDANT: In Mexico, I studied up to the second year in junior high. Here, I'm going to finish the course for my GED.

THE COURT: Here, meaning while you are in custody in the United States?

THE DEFENDANT: Yes.

THE COURT: And tell me what languages you speak.

THE DEFENDANT: Right now only Spanish.

THE COURT: Do you speak any English?

THE DEFENDANT: To tell you the truth, I have not put too much effort in it because of lack of practice, and I am embarrassed, but that is the—a purpose that I would like to do.

[8]

THE COURT: So you speak just a little English, but not well?

THE DEFENDANT: To tell you the truth, I prefer to say no, I don't speak it.

THE COURT: Do you read or write English?

THE DEFENDANT: I do not.

THE COURT: Do you read or write Spanish?

THE DEFENDANT: Yes, I do.

THE COURT: Both read and write?

THE DEFENDANT: Yes.

THE COURT: What kind of work have you done to support yourself?

THE DEFENDANT: Since I have been here, well, we brought something, I have worked as a musician, we formed two musical groups.

Later on I worked, I worked with a compadre, a church sponsor, in his group for five years. I also worked with another compadre of mine, church sponsor, and I helped him with his job as a mechanic. I have—I know how to do that a little bit.

THE COURT: Based upon your education, your experience, and this plea agreement that you have signed, do you believe it is in your best interest to go forward to plead guilty to Count One?

THE DEFENDANT: Yes.

[9]

THE COURT: Do you consider yourself to be in good health?

THE DEFENDANT: To tell you the truth, I have put in a lot of papers and I know that I am ill and I know that I have a pulmonary infection.

They have not listened to me. When I arrived, I was —I looked better, I looked heavier. It could be other problems. I asked—I had asked, I think it's called a request so they could check me over medically, but no, they have not paid attention to me.

THE COURT: Counsel, can I ask you to check that microphone? I'm not certain that it's working.

MR. WILKE: The light is on, your Honor, but it doesn't appear to be.

THE COURT: Let me just ask you to move the operations to the lectern, if you don't mind.

(Counsel and defendant comply.)

THE COURT: Let me ask you, sir, if you are now taking medication for any condition at all.

THE DEFENDANT: No, I'm not.

THE COURT: So as you stand before the Court today, are you under the influence of anything at all that impairs or affects your judgment?

THE DEFENDANT: I am fine. I have never done anything.

[10]

THE COURT: Do you feel well enough to proceed?

THE DEFENDANT: Yes.

THE COURT: Now, I'm going to go over with you the terms of the plea agreement that you have signed, but you must understand that the Court is not a party to this plea agreement. I just want to make certain that you understand what you have signed up to agree to, what you are agreeing to do, and make it clear to you that at this time no one has promised you or figured out what your sentence should be.

As you stand here now, has anybody promised you what the actual sentence will be in your case?

THE DEFENDANT: No.

THE COURT: You understand then from reading this plea agreement that if the Court accepts your guilty plea, we will ask the probation officer to prepare a presentence report, we will at a future date hear from you, your counsel, the U.S. Attorney, with regard to the sentencing guidelines and what is to be a proper sentence for your case under the law.

Is that your understanding?

THE DEFENDANT: Yes.

THE COURT: First of all, my understanding is that you wish to plead guilty to Count One of the Indictment.

Count One accuses you and others of a conspiracy to possess with intent to distribute methamphetamine.

[11]

And there is a second count, I believe, that is to be the subject of a motion to dismiss at the time of your sentencing.

Is that your understanding as well?

THE DEFENDANT: Yes.

THE COURT: Let me ask you or ask your counsel to turn to the page of the plea agreement where you signed your name.

It looks to me as though it was signed yesterday; is that right?

THE DEFENDANT: Yes, it is.

THE COURT: And what is the name that you signed, please?

THE DEFENDANT: Carlos Dominguez.

THE COURT: And let me ask your counsel who the person is that signed on the next page.

MR. WILKE: It's Joe Hernandez, your Honor, the interpreter, certified Spanish interpreter, and myself.

THE COURT: Thank you.

And going back to where you signed it, Mr. Dominguez, you have made the following statement over your signature:

"This agreement has been read to me in Spanish, the language I understand best, and I have carefully discussed every part of it with my attorney. I [12] understand the terms of this agreement and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing guideline provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter."

Are all those things still true today?

THE DEFENDANT: Yes, they are.

THE COURT: Then I will rely upon what is above your signature and just review certain parts of this agreement with you.

First of all, the nature of the offense to which you are offering your guilty plea is the following:

That there was an agreement between two or more persons to possess with intent to distribute more than 500 grams of a substance containing a detectable amount of methamphetamine. And you became a member of that conspiracy knowing that its object was to possess methamphetamine with intent to distribute and intending to help accomplish that purpose.

Do you understand the nature of the offense to [13] which you offer your guilty plea?

THE DEFENDANT: Yes.

THE COURT: And from what you know of the circumstances, are you in fact guilty of that charge?

THE DEFENDANT: Yes.

THE COURT: In the next section of the plea agreement, there is a discussion about the penalties that you face.

You are reminded that absent a determination by the Court that your case satisfies the criteria, which apparently would be a safety valve exception, there is a mandatory minimum sentence that the Court must give you, which is ten years of imprisonment, followed by a five-year period of supervised release.

Do you understand the mandatory nature of the sentence the Court must impose as stated in paragraph 4?

THE DEFENDANT: Yes.

THE COURT: And at this point, has anyone promised you that you will in fact qualify for the so-called safety valve exception?

THE DEFENDANT: No.

THE COURT: So you realize the Court may give you a ten-year sentence or more, as provided for by law?

THE DEFENDANT: Yes.

THE COURT: Knowing that, do you still want to go [14] forward with your guilty plea?

THE DEFENDANT: Yes.

THE COURT: You must realize that the statutory maximum sentence provided for by law is actually as much as life imprisonment, a fine of up to $4 million, and a mandatory special assessment which is required, and that is in the sum of $100.

Do you understand the maximum penalties provided for by law?

THE DEFENDANT: Yes.

THE COURT: And knowing those consequences, do you still wish to go forward with your guilty plea?

THE DEFENDANT: Yes.

THE COURT: Mr. Wilke, is there some reason to believe that this defendant will in fact qualify for the safety valve calculation?

MR. WILKE: Yes, your Honor, there is.

THE COURT: But you've told him that is still subject to the Court's determination?

MR. WILKE: Yes, your Honor.

THE COURT: All right.

You should also understand that supervised release is a period of time that follows any imprisonment. During the period of supervised release, you are subject to various restrictions and requirements. If you violate one or more [15] of those conditions of supervised release, you can be separately incarcerated, returned to prison for a term that could be as much as life imprisonment.

Do you realize the significance of supervised release?

THE DEFENDANT: I do.

THE COURT: And knowing that, do you still wish to go forward with your guilty plea?

THE DEFENDANT: Yes.

THE COURT: There must be in law a factual basis for the Court to receive your guilty plea.

In paragraph 6 of your plea agreement, the following information is offered as the factual basis for your guilty plea: That you agreed to sell methamphetamine for eight—or strike that—5800 dollars per pound to someone who turned out to be a confidential informant. You obtained the methamphetamine from Marcelino Gomez-Benitez.

On May the 13th, you, in the company of Gomez-Benitez and Esteban Barrera-Martinez, met with the person who was the confidential informant and delivered approximately 1.3 kilograms of a substance containing methamphetamine. You were to receive $200 for every pound of methamphetamine you sold to the person that turned out to be the informant. At the time of this transaction, on May 13th, you knew that you were selling methamphetamine and [16] that methamphetamine is a controlled substance.

Is that an accurate statement?

THE DEFENDANT: Yes, it is.

THE COURT: And you agree the Court should use those facts as a basis for accepting your guilty plea?

THE DEFENDANT: Yes.

THE COURT: Is there anything that you would add or change about the factual basis?

THE DEFENDANT: Well, the—to tell you the truth, the only thing that I had asked for was not able to be so. And let's go forward.

THE COURT: I'm not sure I understand your answer.

Is there something about the factual basis here that you would change or add to?

MR. WILKE: May I have a moment, your Honor?

THE COURT: Surely.

(Counsel and defendant confer.)

MR. WILKE: Your Honor, there's nothing else that needs to be added to the factual basis.

THE COURT: All right.

Let's go forward with the next section of your plea agreement, which discusses your constitutional rights.

This reminds you of the rights that you have in connection with having a trial, that you can have a trial before the Court if both sides will waive jury, or a jury [17] trial to find out if you are guilty or innocent of the charges against you in the indictment.

You will continue to have the assistance of counsel, both for trial as you have now, and for sentencing.

You have the right to have the case proceed to trial and require the government to prove your guilt beyond a reasonable doubt.

You have the right to confront or cross-examine the witnesses who would testify at your trial. This mean you or your attorney could question the witnesses to see if they are being truthful.

You would have the right to call witnesses on your behalf and to subpoena witnesses to testify.

At your trial, you could not be compelled to testify. And if you chose not to, that fact could not be used against you. The government would still have to prove your guilty beyond a reasonable doubt.

You will be giving up all of these rights except the right to assistance of counsel if you plead guilty today. There won't be a trial.

Do you understand all of your constitutional rights?

THE DEFENDANT: I do.

THE COURT: Do you have any questions about those rights?

[18]

THE DEFENDANT: No, I do not.

THE COURT: Do you understand that if the Court accepts your guilty plea today, the next phase of your case will be sentencing?

THE DEFENDANT: I do.

THE COURT: And is that what you intend?

THE DEFENDANT: Yes.

THE COURT: Specifically then, do you give up your right to have a trial, whether before the Court or before a jury?

THE DEFENDANT: I do.

THE COURT: Do you give up your right to cross-examine or confront the witnesses who would be present for your trial?

THE DEFENDANT: Yes.

THE COURT: Do you give up the right to call witnesses on your behalf, including using the Court's compulsory process to compel the attendance of witnesses?

THE DEFENDANT: Yes.

THE COURT: And do you, once again, give up the right to remain silent or the privilege against self-incrimination in order to make your guilty plea?

THE DEFENDANT: Yes.

THE COURT: In the next section of your plea agreement called "Sentencing Factors," I see that you, [19] through your counsel, have discussed with the U.S. Attorney's Office the applicable sentencing guideline factors.

This is based upon their study of the law and a prediction about where your base offense level would come out, minus some credits for safety valve conideration, which remains a possibility, apparently a strong one, as well as acceptance of responsibility on account of your early guilty plea.

As I discussed with you at the beginning, do you understand that these predictions are not going to be binding on the probation officer or the Court when it comes time to fix a proper sentence?

THE DEFENDANT: Yes.

THE COURT: And I see there is no agreement about your criminal history or criminal history category. However, it is the belief of the parties at this time that you did not use any violence or credible threats of violence, or possess a firearm or other dangerous weapon in connection with this offense charged in Count One; that the offense charged in Count One did not result in death or serious bodily injury to any person; and that you are not an organizer, leader, manager, or supervisor of others in the offense charged in Count One; and you were not engaged in a continuing criminal enterprise.

[20]

As I said before, the probation officer in investigating your case may come to a contrary view about the matter, and the Court has no way of knowing now what the probation officer will recommend. In other words, these stipulations are not binding on the Court.

Do you understand that?

THE DEFENDANT: I do.

MR. WILKE: May I have a moment, your Honor?

THE COURT: Of course.

MR. WILKE: Thank you.

(Counsel and Defendant confer.)

MR. WILKE: Thank you, your Honor.

We're ready to go forward.

THE COURT: All right.

And, Mr. Dominguez, have you understood everything that I have reviewed with you so far?

THE DEFENDANT: Yes.

THE COURT: All right.

In the next part of the plea agreement, there is an outline of what you are obliged to do and what the U.S. Attorney's Office is obliged to do. Apparently, the U.S. Attorney's Office has bound itself to make a recommendation for a sentence at the low end of the guideline range, provided that the range as calculated by the Court is 27 or higher and provided there is no downward departure.

[21]

Even if, and you must understand, even if the U.S. Attorney's Office adheres to its part of the plea agreement to make a recommendation for a sentence at the low end, that recommendation, like any other, is not going to bind the Court when it comes to fixing the sentence in your case.

Has that been made clear to you?

THE DEFENDANT: Yes, it is.

THE COURT: On page 8, there is a limited mutual waiver of appeal.

Here, in paragraph 17, you are telling us that you give up the right to appeal any sentence in this case, so long as the offense level comes out at 27 or below. And it appears that the government is likewise going to give up its right to appeal, so long as the offense level comes out at 29 or above.

There's a lot of initials written on page 8. So I guess I will ask Mr. Wilke to help us identify who signed what where.

MR. WILKE: Your Honor, there are three interlineations made at paragraph 17.

In the heading, "Collateral Attack" is taken out and that's Mr. Dominguez's, myself's, and I believe Ms. Luege's initials there.

The same three initials appear at line 19 where the number has been changed to 27.

[22]

And then again, the same three initials appear at line 25, indicating that that entire last sentence of para-

graph 17 has been taken out, and that sentence relates to a waiver of collateral attack.

THE COURT: I see.

And, Ms. Luege, those are your initials?

MS. LUEGE: That's correct, your Honor.

THE COURT: And is there anything that government counsel wants to add with respect to the safety valve issue?

In other words, is it fairly likely that this defendant will qualify, or can you make any other prediction at this point?

MS. LUEGE: I think it's possible that he may qualify.

THE COURT: And that's why the agreed upon facts as to three parts; is that right?

MS. LUEGE: That's correct.

THE COURT: All right.

Is there anything else that government counsel wants to add at this point?

MS. LUEGE: No, except I was thinking when I read the top of page 9 that I don't know if we should change —if we change that level 29 in the prior paragraph to 27, and it makes me think that perhaps we ought to change that to 27 also right there.

[23]

THE COURT: Is that your intent that it be a level 27 as the turning point for the mutual waiver of appeal?

MR. WILKE: Yes, it is, your Honor.

MS. LUEGE: I think that makes sense to make that change.

MR. WILKE: That is, your Honor.

Line 3, page 9, the 29 should be changed to 27 there.

THE COURT: Why don't you select a copy between the copies that you folks are working from that you can turn around and file after the hearing.

And let's make sure that it's clear to Mr. Dominguez what this change is because I think it's finalizing your agreement, as it were, with regard to the limited mutual waiver of appeal. But I would invite his initials as well.

MR. WILKE: Yes, your Honor.

May I have just a moment to explain this to him?

THE COURT: Yes, of course.

(Counsel and Defendant confer.)

MS. LUEGE: May I suggest, your Honor, if this is not improper on my part, but I was thinking that rather than file another plea agreement, because we filed the original, and I'm wondering if there is any chance that when we finish [24] the proceeding, the clerk of the Court can give us back the original that we filed, we could make the changes and give it back to the clerk so that we're not filing another document that is also—I mean, it wouldn't be an original, it would be now a copy.

THE COURT: It's sort of a supplement.

I don't know if you can pry it free from the clerk's office downstairs. I assume that that's where it resides in the file.

And if you want to then track Mr. Dominguez down and have him initial it, it's fine with me.

MS. LUEGE: I didn't realize that the Court didn't have—I thought maybe the Court had the original here. I didn't realize that procedurally that was—that is something in my book.

THE COURT: It was filed October 12th, which means it was done downstairs in the clerk's office and we wouldn't have the original here.

MS. LUEGE: I see.

THE COURT: And I'm willing to accept Mr. Wilke's representation if he tells me now there is a C.D. at line 3, page 9, and also a C.W. and C.R.L. on one copy which somebody has possession of.

MR. WILKE: I've explained that change to Mr. Dominguez. He's in agreement with it, your Honor.

[25]

And it is the parties' understanding that the number at line 3, page 9, should be 27. The copy I have indicates 29, but I've now crossed it out on mine and initialed it.

Could I just have you initial it right there? Your Honor, the three parties have now initialed and we can go ahead and file this copy with the clerk. And then I'll get another copy for Ms. Luege.

THE COURT: All right.

Let's go back to paragraph 17. The point here is, Mr. Dominguez, that you are essentially giving up the right to have any other court review your sentence by way of direct review, so that the sentence we give you here in the District Court will be your final sentence.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Is that what you intend?

THE DEFENDANT: Yes.

THE COURT: All right.

And the other part has been stricken out and the U.S. Attorney now is likewise bound to give up its right to appeal so long as the offense level comes out at 27 or above.

Now then, in the next section of your plea agreement, there is a discussion about who is and is not a [26] party to the plea agreement and the circumstances under which you may or may not be allowed to withdraw your guilty plea. I won't review that word by word, but I will go to paragraph 21.

In this paragraph, you represent, except as set forth herein, there are no promises, understandings, or agreements between the U.S. Attorney's Office and you or your counsel.

Is that absolutely true?

THE DEFENDANT: Could you repeat the question for me, please?

THE COURT: Yes.

At this paragraph, you are representing that, except as set forth herein—meaning, in this plea agreement—there are no promises, understandings, or agreements between the U.S. Attorney's Office and you or your counsel.

THE DEFENDANT: That's right.

THE COURT: You agree that's true?

THE DEFENDANT: Yes, it is.

THE COURT: Very well.

When I take your guilty plea, I take it because you represent to the Court that there is a factual basis for your guilty plea, that you understand what you are charged with, and you actually committed the crime charged in Count [27] One.

Are you ready for me to go forward and take your guilty plea?

THE DEFENDANT: Yes.

THE COURT: By your guilty plea then, you represent that you are not pleading guilty because of promises made, threats made against you, or mistreatments or misunderstandings, but because you desire to admit that you are guilty as charged in Count One.

Is that an accurate statement?

THE DEFENDANT: Yes, it is.

THE COURT: Mr. Dominguez, are you related to a codefendant in this case named Marcelino Gomez-Benitez or is it just a coincidence?

THE DEFENDANT: That's a coincidence.

THE COURT: I see.

All right. So no one close to you, related to you, associated with you has somehow been threatened in any way to make you come forward and plead guilty?

THE DEFENDANT: No.

THE COURT: Then looking back to the indictment, the charge against you is that you violated Title 21 of the U.S. Code, Section 846, which charges you with conspiracy to possess with intent to distribute methamphetamine. It sets out the allegations on pages 1, 2, and 3 of this indictment.

[28]

Would you like those read to you again at this time so you are fully mindful of what you are pleading to?

THE DEFENDANT: No, it is fine like this.

THE COURT: All right.

To the charge in Count One that you did violate Title 21 of the U.S. Code, Section 846, as set forth, pages 1, 2, 3, of the indictment, how do you now plead?

THE DEFENDANT: Guilty.

THE COURT: I accept your guilty plea to Count One and enter the following findings:

First of all, I am satisfied that Mr. Dominguez has understood these proceedings that we have conducted today and that he understands the terms of the plea agreement which we have reviewed at some length; that he understands that the plea agreement is not binding upon the Court when it comes time for sentencing.

And I wanted to make sure that Mr. Dominguez has understood all of my questions, because he was recently before the Court and indicated a disinclination to accept whatever it was that was then being considered by him for a disposition in this case.

For whatever reason, clearly Mr. Dominguez has convinced me that he has come forward to offer his guilty plea because it is what he wants to do; that he is satisfied the plea agreement is in his best interest; and that, of [29] course, he is guilty as charged in Count One.

So I rely upon the information imparted to the Court in the plea agreement, and what Mr. Dominguez has

told me after he has been placed under oath, and the representations made over his signature in the plea agreement, and what his counsel has represented as well.

Counsel has represented that he signed this plea agreement on page 11, dated 10-12-99. And I have assumed, but I will clarify that you, Mr. Wilke, were present throughout the proceedings when Mr. Hernandez was reviewing this plea agreement with your client. Is that right?

MR. WILKE: That's correct, your Honor.

THE COURT: So everything over your signature is true and correct?

MR. WILKE: That's correct.

THE COURT: And do you believe that this plea agreement is in your client's best interest?

MR. WILKE: Yes, your Honor.

THE COURT: So his guilty plea is actually made with the complete understanding, as best you can determine, about the sentencing guidelines and the penalties that are provided for by law, including the mandatory minimum sentence?

MR. WILKE: Yes, your Honor.

THE COURT: And do you believe that he understands [30] all of his constitutional rights?

MR. WILKE: Yes, I do, your Honor.

THE COURT: And have you made any promises to him about the exact sentence the Court will give him?

MR. WILKE: No, I have not.

THE COURT: But obviously you've discussed the sentencing guidelines with him very carefully?

MR. WILKE: That's correct, your Honor.

THE COURT: So he proceeds to make his guilty plea with your advice and consent and your concurrence?

MR. WILKE: That's correct, your Honor.

THE COURT: Thank you.

The Court finds that the defendant understands each and all of his constitutional rights, that he's knowingly, intelligently, and voluntarily waived those rights and that he's made his guilty plea freely and voluntarily and not because of promises, threats, or inducements made to him by others or the plea agreement.

We will go ahead and set the matter down for sentencing. I will ask the clerk to set a date and time.

THE CLERK: January 31st, 2000, 4 o'clock p.m.

THE COURT: Is that available for both counsel?

MR. WILKE: Yes, your Honor.

MS. LUEGE: Yes, your Honor.

THE COURT: Then the probation officer is directed [31] to prepare a presentence report returnable 1-31-2000, at 4:00 p.m. or such other date and time as the Court may order.

Let me ask counsel if you anticipate any particular difficult issues with regard to background or circumstances of the offense.

Mr. Wilke?

MR. WILKE: No, your Honor.

THE COURT: Ms. Luege, you agree?

MS. LUEGE: Yes.

THE COURT: All right.

Anything further in Mr. Dominguez's case today?

MR. WILKE: Nothing further, your Honor.

MS. LUEGE: I have nothing further, your Honor.

THE COURT: That being the case then, we will vacate the trial date as to this defendant and adjourn proceedings in his matter.

COUNSEL: Thank you.

(Proceedings adjourned.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. SA CR 99-67 AHS

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ, DEFENDANT

[Filed: Jan. 26, 2000]

DEFENDANT'S WITHDRAWAL OF REQUEST TO CONTINUE SENTENCING, POSITION RE: SENTENCING AND PERSONAL STATEMENT RE: SENTENCING

Defendant CARLOS DOMINGUEZ, by and through his attorney of record, Deputy Federal Public Defender Craig Wilke, hereby withdraws his request to continue the sentencing hearing from Monday, January 31, 2000, to Monday, March 6, 2000. This request was made by way of a stipulation and proposed order lodged with the Court on January 24, 2000. Mr. DOMINGUEZ no longer requires a continuance because defense counsel received the Presentence Report on January 25, 2000, and reviewed it with Mr. DOMINGUEZ on January 26, 2000.

Mr. DOMINGUEZ has no material objections to the Presentence Report. Mr. DOMINGUEZ concurs with

the Probation Officer's recommendation that he be sentenced to the mandatory-minimum term of 120 months imprisonment. Mr. DOMINGUEZ requests that the Court recommend to the Bureau of Prisons that he be incarcerated in a facility in the Southern California area.

Finally, Mr. DOMINGUEZ submits a personal statement, attached hereto as Exhibit A, for the Court's consideration at the time of sentencing.

Respectfully Submitted,

MARIA E. STRATTON
Federal Public Defender

Dated: January 26 , 2000 By: /s/ CRAIG WILKE
CRAIG WILKE
Deputy Federal
Public Defender

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 NORTH SPRING STREET, ROOM G-8
LOS ANGELES, CALIFORNIA 90012
213-894-4445
fax 213-894-4422

[SEAL OMITTED]

SOUTHERN DIVISION
411 W. Fourth Street
Santa Ana, CA 92701
714-338-2468

EASTERN DIVISION
4100 Main Street, Rm 137- A
Riverside, CA 92501
909-276-6170

COURT INTERPRETER SERVICES

DECLARATION OF INTERPRETER

I, the undersigned say:

I am SpanisH/English and English/Spanish Official Court Interpreter certified by the Administrative Office of the United States Courts and I have translated the attached document(s) from Spanish into English. I declare, under penalty of perjury, that to the best of my abilities and belief, this is a true and correct translation of the Spanish language text.

DESCRIPTION OF DOCUMENT(S)

Letter from Carlos Dominguez addressed to the Court.

Executed this 10th day of January, 2000, at Los Angeles, California.

Lenne Rosen-Kabe

/s/ L. ROSEN-KABE

Case Name:	U.S. vs Dominguez
Case Number:	SACR99-67-AHS
Ordered by:	DFPD Craig Wilke
File Name:	9967ahs.lrk
No. of Words:	591

TRANSLATION

(1) Honorable Judge Alice Marie Stotller [sic]

My name is Carlos Dominguez Benitez

[illegible flourish]

My reason for writing or the reason for my letter is to let you know under oath and in writing that the information I gave regarding my life to the probation officer, in the presence of my attorney, is completely true.

Because the real reason I'm incarcerated was due to forces beyond me. I am the one responsible for the support of my children and my mother, and it was right around that time that I was going through really tough economic times. My wife had given birth, I hadn't paid the rent and other food expenditures and bills. For the first time, I felt there was not way out, pressured, without knowing what to do. This opportunity came up, or rather, I was drawn into this business. I'm saying that I was drawn into it because I did not know the informant. I was prompted by despair, I agreed even though I had a feeling that something bad was going to happen to me because of the pressure from my expenses, and I was thinking that unless I paid the rent, where was I going to take my family? And, well, I did not have what it took to resolve the problem.

Maybe now my remorse won't do me any good, but I should tell you that it's not just that I'm remorseful, but also that it has made me very sad, because due to this error or offense that I committed, while looking for a way to resolve my economic problem back then, I only managed to lose my family. I've lost them, and perhaps forever, and even without knowing what justice has in store for me when I stand before you,

(2) it's very sad and painful for me, and believe me, I never imagined I would go through an experience like this one. I've lived my life alone, far away from my parents, that is to say, I grew up an orphan. Ever since I was very young I've had to face life. I had to work very hard and go it alone in order to get to my present age. I know and I understand the seriousness of my situation. I just hope for a little bit of consideration from you as a human being. I'm looking for a chance, a chance for my life not to be destroyed totally. I'm hoping with my heart full of hope, that on the day of my sentencing I may receive a fair sentence, so that not too long from now I might return to my country to fight for my home, to recover my family who are the reason for my existence. I again swear to you that my remorse is greater than the pain and sadness of having lost [crossed-out word], for now, my children, because I know that it was my mistake [illegible flourish] that caused all of this. Lastly, I want you to know that I'm never going to forget this experience, and even though I've never been a delinquent like the one I've been made out to be, I swear to you that I'll never again set foot in a jail, wherever I may be, for another error or offense like this one.

I take my leave most respectfully, hoping to receive a little bit of consideration from you, [who represent] justice.

Yours very truly, Carlos Dominguez. [illegible flourish]

Translator's note: punctuation has been added/modified by the translator.

(1) HONORABLE JUDGE ALICE MARIE STOTLLER

MI NOMBRE CARLOS DOMINGUEZ BENITEZ

LA RAZON POR LA QUE LE ESCRIBO O DEMI CARTA ES PARA INFORMARLE BAJO MI JURAMENTO DE PALABRA Y LETRA QU Y ESTANDO PRESENTE MI ABOGADO ES COMPLETAMENTE VERDAD

PUES LOS VERDADEROS MOTIVOS POR LOS CUALES ME ENCUENTRO PRISIONERO PARA MI FUERON DE MAYOR FUERZA SOY EL RESPONSABLE DE LA MANUNTENSION DE MIS HISO. Y MI MADRE Y PRESISAMENTA MUY FUERTES MI ESPOSA HABIA DADO A LUZ NO HABIA PAGADO LA RENTA Y OTROS GASTOS DE COMIDA Y BILLES POR PRIMERA VEZ M SENTI SIN SALIDA PRESIONADO SIN SABER QUE ACER SE PRESENTO LA OPORTUNIDAD O MAS BIEN MI POR QUE YONO CONOCIA AL INFORMANTE ARRASTRADO PO LA DESE-SPERACION ACEPTE AUN PRESINTIENDO QUE ALFIC MALO ME PASARIA POR LA PRESION DE LOS GASTOS A DONDE LIEVARIA A MI FAMILIA Y PUES NO TENIA LO NECESARIO PARA SULVENTAR EL PROBLEMA

AHORA QUIZAS MI ARREPENTIMIENTO NO SIRVA DE NADA PERO DEVO DECIRIE QUE NO NOMAS ME ARREPIENTO SINO QUE TAMBIEN ME HA DOLIDO MUCHO BUSLANDO SOLO LOGRE PERDER AMI FAMILIA LOS HE PERDIDO Y QUIZAS PARA SIEMPRE Y AUN SIN SABER QUE SUERTE ME DEPARA ANTE USTEDES LA JUSTICIA PARA MI

(2) ES TRISTE y MUY DOLOROSO Y CREAME NUNCA IMAC VIVIR UNA ESPERIENCIA COMO ESTA MI VIDA LA VIVIDO SOLO LEJOS DEMIS PADRES O ES DECIR CRESI HIUERPANO DESDE MUY NINO TUVE QUE ENFRENTARME ALA VIDA TUVE QUE TRABAJAR MUY DURO Y VALORARME POR SI MISMO PARA LLEGAR AL EDAD QUE TENGO SE Y COMPRENDO DELO GRAVE DE MO SITUACION SOLO ESPERO UN POCO DE CONSI OPORTUNIDAD, UNA OPOR-TUNIDAD A QUE NO DESTRUY DE ESPERANTA QUE ELDIA DEMI SENTECIA SEMI DE UN CASTIGO JUSTO PARA QUE EN UN TIEMPO NO MUY LEJANO PUEDA REGRESAR AMI PAIS PARALUCHER POR RECONSTRUIR MI HOFIAR Y REUPERAR AMI FAMILIA YA QUE SON LA RAZON DE MI EXISTIR NUEVAMENTE LE JURO QUEMI ARREPENTIMIENTO ES MAS GRANDE QUE EL DOLOR Y LA HIJOS PORQUE SE QUES ABASE DE MI HERROR SEPA QUE ESTA EXPERIENCIA NUNCA LA OLVIDARE Y AUNQUE NUNCA HE SIDO UNDELINCUENTE COMO PISARIA LA CARCEL DONDE QUIERA QUE ESTUVIERA POR OTRO HERROR O FALTA COMO ESTA.

ME DESPIDO RESPETUOSMENTE DE USTED Y CON LA ESPERANTA DE OBTENER UN POCO DE CONSIDERACION POR PARTE DE USTEDES LAJUSTICIA.

ATTE CARLOS DOMINGUEZ

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

SA CR 99-67-AHS

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ, DEFENDANT

HONORABLE ALICEMARIE H. STOTLER,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Santa Ana, California
Monday, January 31, 2000

APPEARANCES

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FOR THE DEFENDANT:

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Deputy Federal Public Defender
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(714) 338-4500

[5]

THE CLERK: Calling item number 14, SA CR 99-67-AHS, United States of America vs. Carlos Dominguez.

Counsel, your appearances, please.

MS. LUEGE: Good afternoon, your Honor.

Carmen Luege on behalf of the United States.

THE COURT: Thank you.

MR. WILKE: Good evening, your Honor.

Craig Wilke on behalf of Mr. Dominguez who is present, in custody.

THE COURT: Yes. I'm sorry to have to make you wait behind a matter that was not intended to be lengthy.

Is the Court's interpreter still present as well?

MR. WILKE: Yes. Mr. Dominguez is being assisted by the Spanish interpreter.

THE INTERPRETER: Good afternoon, your Honor.

Dolores Gordon, certified federal interpreter. My oath is on file.

THE COURT: This matter is trailing behind the Roberson case. We appreciate your patience.

The Court has before it the matter of sentencing after the defendant's guilty plea to Count One of the Indictment. And we have been able to review the filings by [6] the parties.

We need to make sure that the defendant is prepared to go forward today, since the presentence report has not been in his hands for the full 35 days.

MR. WILKE: Your Honor, defense counsel is prepared to go forward, but I would ask Mr. Dominguez respond directly to the Court.

THE COURT: Yes.

MR. WILKE: I've been given contrary statements from him about that.

THE COURT: Mr. Dominguez, the rules require that the report from the probation officer be available to you for at least 35 days, and we note that when the presentence report was given to us, that it was disclosed to counsel and to you on January 25th.

Obviously, this is not 35 days later. I know that, according to your counsel's filing, you've had a chance to review it back on the 26th.

Are you satisfied to go forward with your sentencing today or would you like more time to consider it?

THE DEFENDANT: I would like more time.

THE COURT: All right.

Mr. Wilke, give us a date that's serviceable on your calendar, please, and we will reset the matter.

THE DEFENDANT: I even wrote a letter, your Honor.

[7]

THE COURT: I'm sorry, I can't hear you.

THE DEFENDANT: I even wrote a letter, your Honor.

THE COURT: And the purpose of the letter is to do what?

THE DEFENDANT: For the Court.

THE COURT: But does it pertain to a resetting of the matter, or does it pertain to sentencing?

THE DEFENDANT: To talk about this sentencing, and also about my attorney because I'm not satisfied with the help that I have received from him.

THE COURT: Well, let me ask Mr. Wilke as an officer of the Court, a) to give us a new date for a hearing and b) to accept from the defendant the letter so that it can be properly filed and made of record as opposed to something other than presented by way of something in an envelope.

MR. WILKE: As to a date, your Honor, I would ask for March 13th, that it's over 35 days. And I'm not available March 6th, which I believe would be the next 35-day time.

THE COURT: All right.

MR. WILKE: I'll be in L.A. that day, but March 13th.

THE COURT: And, Ms. Luege, would that work for you?

[8]

MS. LUEGE: That's fine, your Honor.

THE COURT: Let me ask the clerk to locate an open time spot on our March 13 calendar for further proceedings.

And then the letter, if appropriate, needs to be filed under seal if it's got confidential information in it. And, Mr. Wilke, if you feel that you can not submit it to the Court, then I'll let the defendant give it to the clerk.

MR. WILKE: Your Honor, I have no problem filing it under seal with the Court.

I believe Mr. Dominguez may have some objection to me seeing the letter, though, and I'd ask the Court to inquire of him.

THE COURT: Mr. Dominguez, do you have any objection to the Court receiving your letter through Mr. Wilke who knows how to properly file it with the Court, or is it something that you want to leave in the envelope for me to see directly?

THE DEFENDANT: I want this letter to go to the Court, to the Court only, because I tried to send the letter to the Court through Mr.—through my attorney, and he did not deliver it.

THE COURT: You must understand that a) I will take it from you, but b) I may decide to file it as part of the public record. There is no promise or guarantee that [9] whatever it is you write to me will necessarily be private from the prosecutor or from your attorney.

Now, knowing that, you're welcome to give it to me.

THE DEFENDANT: There is no problem with me for my attorney to read it, but the most important thing is that the Court also reads it.

THE COURT: Yes. And I will do that.

And I will also make it of record, one way or the other, so it's clear we have received it.

What we will do is put your sentencing over to March the 13th.

What time?

THE CLERK: Three thirty.

THE COURT: Three thirty in the afternoon, so that you've got more time to consider the presentence report.

We will accept the letter from you, and we will have the matter go forward on that date. If in the event I read something in your letter that is of concern to me and/or to counsel if it is in fact disclosed to counsel that necessitates other proceedings, we will calendar a status conference before the date of March the 13th at 3:30 p.m.

In light of these proceedings, is there anything else, Ms. Luege, that you wish to inform us of?

MS. LUEGE: Nothing further, your Honor.

[10] THE COURT: And how about you, Mr. Wilke?

MR. WILKE: One brief thing, your Honor.

Just for the record, I would note that as part of the filing on January 26th, attached thereto was Exhibit A which is a letter from Mr. Dominguez to the Court with the English translation.

THE COURT: Yes. And I've received that and I have read that.

So perhaps that's one letter that Mr. Dominguez has referred to in passing today. But that letter is already before us and I trust that you can show it to him as you sit there now, so that he is aware we have already read that.

(Counsel complies.)

THE COURT: All right.

That's the Court's order in this matter. Thank you.

MS. LUEGE: Thank you, your Honor

THE COURT: We stand adjourn.

(Proceedings adjourned.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

CRIMINAL MINUTES - GENERAL

Case No.: SA CR 99-67 AHS Date: February 2, 2000

DOCKET ENTRY:

[I hereby certify that this document was served by first class mail or Government messenger service, postage prepaid, to all counsel (or parties) at their respective most recent address of record in this action on this date.]

Date: 2/4/00 Deputy Clerk[signature illegible]

PRESENT: HON. ALICEMARIE H. STOTLER, JUDGE

Debra Beard	Not Present	Carmen R. Luege
Deputy Clerk	Court Reporter	Asst. U.S. Atty not present

U.S.A v. (DEFENDANTS LISTED BELOW)

(1) Carlos Dominguez
not present x custody __ bond

ATTORNEYS FOR DEFENDANTS

(1) Craig Wilke, DFPD
not present x appointed

PROCEEDINGS:

(In Chambers) ORDER FILING LETTER OF DEFENDANT

On January 31, 2000, the Court received the attached letter from the defendant in open court.

The letter is ordered filed. The clerk is directed to serve this minute order along with the letter on the attorneys of record and defendant Dominguez.

[Received: Feb. 1, 2000]

Dear Honorable, Alice Marie Stotler,

My name is carlos Dominguez I am 31 years old and currently incarcerated at Santa Ana, Santa Ana, CA. I have been I custody since 5/13/99 and will be respectfully be in front of you and your court for sentencing on 1/31/00 the reason for this letter is not only to let you know about myself but also to inform you of the unfair representation I feel I have received from my lawyer. I feel that my lawyer has done nothing for me from the start. I asked for a meeting to be set up with the D.E.A. with my lawyer responding "they do not want to talk to you" and a meeting was never set up not because the D.E.A. declined but only because my lawyer never asked. Also I asked for a meeting to be set up with the D.A. witch to say never happened because of my lawyer. I wanted to asked you for a new lawyer and when I had the chance to in court my lawyer whispered in my ear that I was not allowed to say anything to you or to speak openly with the court. With me having a langue barrier I could not ask you if this were true. Now that I am to come before you and your court to get sentenced and I feel that I was not fairly represtated. I respectfully ask you to put off my sentencing due to the fact I feel I was railroaded into signing the deal that I signed. Also I respectfully ask you that you assign me a new lawyer and a fair

amount of time in witch me and my new lawyer may go over my case. I am sorry that this notice came to you at such a short time, but I knew of nothing else to do. I thank you for your time and I pray that the court will find my request in order.

Sincerely,

Carlos Dominguez

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

CRIMINAL MINUTES - GENERAL

Case No.: SA CR 99-67 AHS Date: March 6, 2000

PRESENT: HON. ALICEMARIE H. STOTLER, JUDGE

Debra Beard	not present	not present
Deputy Clerk	Court Reporter	Asst. U.S. Attorney

U.S.A vs. (Defts listed below)
Carlos Dominguez
(1) T/N Carlos Dominguez Benitez
not present xx custody __ bond

Attorney For Defendants

(1) DFPD Craig Wilke
not present __apptd __retnd

PROCEEDINGS:

(In Chambers) ORDER THAT DEFENDANT'S LETTER TO COURT SHALL BE FILED AND SERVED ON ALL COUNSEL OF RECORD

On March 3, 2000 the Court received a letter from Carlos Dominguez Benitez. The Court orders the Clerk to file the letter and serve a copy of the letter on all counsel of record.

The Clerk shall serve a copy of this minute order on all counsel of record in this action and the defendant at the last known place of incarceration.

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL. POSTAGE PREPAID, TO ALL COUNSEL (OR PARTIES) AT THEIR RESPECTIVE, MOST RECENT, ADDRESS OF RECORD, IN THIS ACTION, ON THIS DATE.

DATE: 3/7/00

[Signature Illegible]
DEPUTY CLERK

cc: Counsel of Record
Defendant

[Received: Mar. 3, 2000]

Honorable Judge Alice Marie Stoler

My name is *Carlos Dominguez Benitez*, with all due respect I ask for your forgiveness for bothering you again.

Honorable Judge the reason I write this letter is to explain that I feel I didn't get the opportunity to get proper legal representation in my case. My lawyer *Craick Wilke* and I never had good communication he never listened to my opinions or petitions. Whenever I asked him questions he always answered me with as little information as possible. He has always made me feel like the worst criminal of all. He has made me get into a state of desperation. I don't know what to do I feel that my life dos not life anymore. I feel that I'm waiting for my death. I ask myself why so much pain why is tit that they deny me of an opportunity to redeem myself. I ask myself if my mistake is the worst in the world.

My lawyer, since the first meeting we had all he talks to me about was a sentence of 10,15 and 20 years. I understand and accept my responsibility but nobody has ever understood me or considered anything of why I did what I did. I never looked for anyone they came looking for me. Like I told the Government I did it as necessary I did it to comply with me economic of my program and my family well being knowing that my family was in economic problems I did what I did now I'm incarcerated and facing the biggest problem I have

ever had in my life that why I ask for your consideration in my case and if I could have the proper legal representation thank you *Honor Alice M. Stodler*

Sincerely,

/s/ [Signature Illegible]

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

SA CR 99-67-AHS

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ, DEFENDANT

HONORABLE ALICEMARIE H. STOTLER,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

Monday, March 13, 2000

APPEARANCES

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FOR THE DEFENDANT:

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[4]

THE CLERK: Calling item number 31, SA CR 99-67-AHS, United States of America vs. Carlos Dominguez.

Counsel, your appearances, please.

MS. LUEGE: Good afternoon, your Honor.

Carmen Luege on behalf of the United States.

THE COURT: Thank you.

MR. WILKE: Good afternoon, your Honor.

Craig Wilke on behalf of Mr. Dominguez who is present, in custody, being assisted by a Spanish interpreter.

I do apologize for my lateness.

THE COURT: Thank you.

And the interpreter's appearance, please.

THE INTERPRETER: Good afternoon, your Honor.

Dolores Gordon, certified federal interpreter. My oath is on file.

THE COURT: Thank you.

The Court has before it once again the matter of sentencing in Mr. Dominguez's case. Again, we have given to counsel a tentative ruling concerning our findings based upon the parties' filings and the presentence report.

At this time, the 35-day period has been passed, [5] irrespective of waiver, and we've had the opportunity, I'm certain, for what needed to be accomplished to be accomplished.

At the last hearing, the Court did receive a communication from Mr. Dominguez and, as promised, it

was filed and distributed to counsel. That was on January 31, 2000.

And on March 6, 2000, the Court received an additional letter from defendant indicating at this time that he feels he has not had good communication with Mr. Wilke and explaining to the Court the reasons for the commission of the offense, as I read the last paragraph.

I'm going to proceed with the sentencing. I fully expect to hear from Mr. Dominguez. And to the extent that he needs to amplify or expand upon what he has already written to us, he is welcome to do so.

Let me also say that, based upon counsel's request to the Court, I'm inclined to make the recommendation requested that defendant be placed in a Southern California facility. And as before, I have read the defendant's letter to the Court that was submitted in defense counsel's submission to the Court earlier.

As I recall, we started before and Mr. Wilke had brief remarks. I think we should start once again, turn to Mr. Dominguez for any remarks that he may wish to give to [6] us, and then hear from the government. And if that's not a historical recitation that's fully accurate, counsel may correct me.

Let's turn to Mr. Wilke now.

MR. WILKE: Thank you, your Honor.

With regard to the appropriate sentence, your Honor, the only issue there is where within the guideline range he should be sentenced. As the Court is aware, this is a ten-year mandatory minimum case and there is no availability for relief from the mandatory minimum sentence.

We would submit that a sentence of 120 months, which is the mandatory minimum, is appropriate. It constitutes approximately the middle of the range of the applicable sentencing guideline range, which is 108 to 135. And in light of the fact that this is—will be the first prison commitment for this defendant, ten years is a lengthy period of time.

One point that I would like to bring to the Court's attention is, since being incarcerated, Mr. Dominguez has completed his equivalency degree, his G.E.D. and been attending those classes; he has got some documentation to that effect that he's brought with him. It has not been previously filed with the Court, but I am bringing that to the Court's attention. I think that does bear upon where within the range he should be sentenced.

[7]

And if the Court would like that documentation, we can file that either after the hearing, or the Court could look at it now.

THE COURT: I can accept your representation.

Did you say he's actually received the degree?

MR. WILKE: He's received the certificate, yes, your Honor. And he has that with him.

THE COURT: All right. Good.

No, I'd just as soon he keep it since it's valuable proof.

MR. WILKE: The other factor, I think, that the Court should be aware of is that this defendant—and I think this largely explains this defendant's lack of satisfaction with his legal representation.

This defendant entered into a plea agreement with at least an expectation that he would be eligible for a sentence below the mandatory minimum. And when it became clear upon receipt of the presentence report that that wasn't available, that is really what precipitated, I believe, the breakdown in attorney-client—the attorney-client relationship that the Court has become aware of.

THE COURT: I'm not sure it's such a breakdown from what I have been able to ascertain from defendant's letters, but I can see the criminal history for this [8] defendant took him out of the eligibility category that apparently others in similar circumstances were qualified for.

MR. WILKE: Correct. And which the parties—as is reflected I think in the plea agreement, the parties expected he would qualify for, at least going into it.

The government, both parties stipulated as part of the plea agreement a safety valve application, at least a safety valve factor. So the safety valve was contemplated, but then turned out not to be appropriate in light of the criminal history.

With that, given that he is looking at a significant period of time that is far in excess of what he expected, and he has made efforts to at least accomplish something beneficial to his life during the time he's been in jail so far, I would submit that a sentence of 120 months is appropriate and I'd ask the Court to give him that sentence.

THE COURT: Very well. Thank you.

Mr. Dominguez, let me invite you to make any statements that you wish to make. Under the circumstances, I think it may be appropriate to ask you and

the interpreter to stand at the lectern since the sound system does not appear conducive to speaking from the counsel table.

And I'll be pleased to hear from you with regard [9] to anything you wish to say regarding the judgment and your case.

THE DEFENDANT: I have never felt that I had the proper representation, the way it should have been in my case.

From the beginning, I never had any knowledge about the points of responsibility, the safety valve, or anything like that. I honestly, from the beginning, I accepted responsibility through my attorney, but he never paid any attention to me, to what I told him about the problem that I had. I told him from the beginning that I had a problem, that I was attending a program. And at the end, he told me allegedly that I had never told him, that I had never notified him of it.

I have never hidden anything in my case about the things that I have done. Everything I said—I have said has been the truth and the reason why I did it. And I always asked for another chance. I always asked him for an opportunity to meet with a government agent, and he never wanted to do that.

And every time he came to see me, he treated me like if I was the worst of the criminals, making me feel badly. From the very, very beginning, he told me that it was going to 10, 15, or 22 years. And I ask myself, how could that be possible.

[10]

And honestly, I have never felt comfortable even when I asked him to postpone the sentencing and he

said he was not going to do that. And I asked him why not, and he said that there should have been a very important reason to do it. And I told him, "Isn't the ten years that I am going to get not important enough?"

I have always told him about my family and about my children who are depending on me. And honestly, I assert my—I assert responsibility, I made a mistake. However, I am not the type of criminal that I'm being made to be.

The program that I had I explained to my attorney from the first day that he came to see me. And I was attending that program doing properly, and really the crime that I committed, somebody sought me, I didn't look for the crime.

THE COURT: Can I ask you if you are talking about the diversion program from one of the state courts?

THE DEFENDANT: The drugs?

THE COURT: Yes.

THE DEFENDANT: Yes.

THE COURT: And so you are telling me that this was something that you had discussed with your attorney?

THE DEFENDANT: Yes.

THE COURT: And when you talk about the problem you had, is that also related to being on a diversion [11] program from the state court?

THE DEFENDANT: Yes.

THE COURT: So you are indicating that you believe everyone knew about your criminal history?

Is that what you're saying?

THE DEFENDANT: Well, from the very beginning when he went—when he came to see me, I explained it to him.

THE COURT: I understand.

So what you're indicating to me is that you believe from the beginning you had disclosed that you had a criminal record; is that right?

THE DEFENDANT: Yes.

THE COURT: And so are you suggesting now that because your attorney knew about it, that the government attorney should have known about it and the Court should have known that you would not qualify for the, quote, "safety valve," as the guidelines calls it?

THE DEFENDANT: Actually, that's what was never explained to me.

THE COURT: Well, the plea agreement that was entered into and discussed with you, I think talked about the safety valve and explained that you might qualify.

Do you remember that?

THE DEFENDANT: When I signed here before the Court, I signed at a level 27.

[12]

THE COURT: Well, I think what you signed is of record and it speaks for itself.

I'm trying to understand what it is that somehow is wrong with your case, and so far I'm not hearing anything that is wrong with your case except that you may not be comfortable either with the attorney or how the case is coming out. Yet you continue to tell me that you have accepted responsibility for what you did wrong.

THE DEFENDANT: Yes. I have—

THE COURT: I'm sorry.

THE DEFENDANT: I have always accepted responsibility, but from the beginning I have felt that my attorney and I didn't have enough communication.

THE COURT: And what would you have be different?

THE DEFENDANT: That he should have explained to me from the beginning what it was meant by the points, by the safety valve, by everything. And I never knew about that.

THE COURT: Well, we had a lengthy change of plea proceedings, Mr. Dominguez, and it's difficult for me to accept what you say in light of those proceedings that we conducted. But I'm willing to hear you out and I want to make clear that we are proceeding to the sentencing today.

I do not see that there is something before me or of record that says there is something wrong with the way [13] your case was handled or how it comes out, although I do understand that you may be disappointed. Therefore, I do not intend to change your attorney, but I want to make sure that we hear what you have to say, not only about your case generally, but about you specifically.

Mr. Wilke has already told us that you have achieved the general education degree, which hopefully indicates a successful period of time in custody which will lead to better things after you are released.

Please, continue.

THE DEFENDANT: I'm sorry.

When I was arrested by the state, allegedly I was given formal probation and I was told that if I did not comply, if I didn't do everything with the formal probation that I was given, I was going to get from three to six months in jail.

And that's what I don't understand. If I was at my first offense level here, I signed at a level 27. When Probation came to see me and I talked to them about my life and they came back with a report, with a level 29 and a number 3 on the crime, that's what I don't understand.

THE COURT: I understand how it came out that way.

They have researched through the probation officer these offenses. And under the guidelines, these are the proper points assigned to you for those prior proceedings. [14] There are many names used in these cases, but they come back to you and you do not deny that. And the way these offenses were researched shows to me that they have been properly calculated so as to take you out of category 1 and put you in category 3.

THE DEFENDANT: When I was incarcerated before and I went before the Court, it is explained to the Court in that report. I paid for it, I was 20 days incarcerated and I paid for it.

And the only thing that was pending was the program, and I was doing the program. That's why I don't understand. Allegedly they are giving me two more felonies.

THE COURT: No, that wouldn't be right.

But I suspect you didn't finish the program because you got arrested and therefore a bench warrant was issued when you didn't complete it.

THE DEFENDANT: Yes, I didn't—I didn't comply with the program. How could I? I was arrested here.

THE COURT: Right.

THE DEFENDANT: I was attending the program and I was doing things well until the informant, I don't know who gave him my number, and I was pulled by necessity.

I had all the expenses for the program, all the expenses for my family, my—my companion had just had a baby. I had too many expenses, and due to necessity I find [15] myself here.

THE COURT: Yes, sir, I do understand that.

Is there anything else you would like to say?

THE DEFENDANT: That was the most important, at least for you to listen to me.

THE COURT: Yes, sir. Thank you.

Please, take a seat.

THE DEFENDANT: Thank you.

THE COURT: Let me invite government counsel to respond to both defense counsel's remarks and any of the statements made by defendant.

MS. LUEGE: I think that Mr. Wilke is correct when he points out that there's nothing much that anyone can do in this case because we're up against this mandatory statutory minimum of ten years.

I do want to clarify, I hope clarify, for the record a couple of things. Initially, when counsel and I negoti-

ated this plea agreement, we both envisioned that he qualified, that the defendant would qualify for the safety valve. The government was unaware that defendant had any prior convictions that would intervene with that.

Shortly before entering the actual guilty plea, we found out that there was this diversion on this defendant and that that had occurred, as the Court can see at paragraph 83 of the presentence report, on April 6th of '99. [16] And we had arrested this defendant, I think, in May of '99. So we found out about this and I immediately—that is, we, the government found out about it —and I immediately discussed it with Mr. Wilke, that we had this diversion.

And I was concerned about the effect that that would have on the safety valve and the terms of the plea agreement that in good faith we had sent counsel. In our discussions, Mr. Wilke and I decided to leave the agreement very much, I mean, there were changes made here in court because Mr. Wilke made some changes in court that day, the day of the actual change of plea.

But basically, with regard to the safety valve issue, we decided that Mr. Wilke wanted to have the opportunity to argue to the Court that he would still qualify for the safety valve because there was no final judgment, because maybe he would only end up with one criminal history point and then he would still qualify, even with that problem.

And so, because we had issued the plea offer in good faith and Mr. Wilke's present representation to the government made sense, I could see a possibility of intervening factors making the safety valve still appli-

cable, we left the agreement as we had originally drafted it. There were a couple of changes made here in court that day, but then we proceeded.

[17]

What Mr. Wilke and I found out, once we got the Pretrial Services report, and I know this from our conversations, that it was after we got the probation report —I'm sorry if I called it pretrial—the probation report, we found out that there was this other criminal history points, as stated in paragraph 77 and paragraph 80, and paragraph 90 of the probation report.

And these additional criminal history points had nothing to do with the diversion issue that Mr.—well, at least mostly two of them didn't have anything to do with the diversion issue that Mr. Wilke and I had been worried about. So that even if Mr. Wilke came here and argued to the Court that, you know, he should only get one criminal history point for the diversion and so still qualify for the safety valve because he had these additional points, that argument would now be meaningless.

And that is how we find ourselves in the situation we're in, which is, the government and the defense counsel entered into a good faith—and the defendant entered into a good faith plea agreement, and because of this unforeseen situations, the defendant can not receive the benefit of the bargain in essence, because he has to go and serve the mandatory minimum ten years.

And I think that explains, at least from the government's perspective, what occurred. And I wanted to [18] put that on the record because official proceedings may come up as a result of this, so that at least there's a record of the government's understanding of what happened in this case.

And I don't know whether the Court has any questions for me.

THE COURT: I alluded to the fact that these prior convictions were in other names.

MS. LUEGE: Yes.

THE COURT: And that is significant, I think, in the sense that persons entering into a plea agreement for one Carlos Dominguez-Benitez, wouldn't necessarily be looking for charges against Antonio Cardinez, Carlos Alberto Dominguez, and a series of other names. And that's what I was trying to explain to defendant, that how this case comes out criminal history category 3 is very apparent, I think.

MS. LUEGE: Yes.

THE COURT: The diversion is also a conviction, albeit not a sentence, as I read these proceedings. And my understanding is that the state court seems to require the conviction by the guilty plea.

MS. LUEGE: That's correct.

THE COURT: And so long as a person does not get arrested in the interim and successfully completes the diversion program, then there would not be a sentence and a [19] dismissal, presumably. Unfortunately, Count One here, this offense behavior, interrupted that program which defendant tells us was going well.

So I understand how it came out this way. I think the defendant understands, but is not pleased with this. And I can understand that, but I do understand as well how the plea agreement came out.

MS. LUEGE: And let me just clarify that also.

When the government first obtained the rap sheet for this defendant, the criminal history, it did not reflect any of these offenses. And I think it is, the Court is correct, because the agent was running a certain name and it just, you know, the record wasn't there for the person and we didn't find it.

THE COURT: And with regard then to defense counsel's position, obviously the government is in agreement that the low end of the sentencing guideline would be appropriate under all of the circumstances.

MS. LUEGE: Oh, certainly, your Honor.

And that's within the terms of the plea agreement, and the government stands behind that plea agreement and its recommendations in every way, except we are precluded from going below that because of the safety valve, your Honor.

THE COURT: Because of the mandatory sentence.

MS. LUEGE: The mandatory minimum, yeah, the [20] safety valve.

THE COURT: Thank you.

MS. LUEGE: Thank you.

THE COURT: Is there any legal cause why the sentence should not now be pronounced?

MR. WILKE: No, your Honor.

THE COURT: Very well.

First of all, the Court has read and considered not only the presentence report, but the letter that Mr. Dominguez wrote to the Court and the reasons why this crime was committed. They are not unusual reasons, but they do result, not uncommonly, in ten-year sentences and much longer.

While I think there is reason for Mr. Dominguez to be disappointed in the outcome, that is to say, he must be sentenced under the mandatory minimum and he does not qualify for the safety valve, I can not see that anything was mishandled or anything came out wrong. In fact, the government attorney's explanation is essentially what I regard to be the background to the case, and the research by the probation officer bears out this outcome.

His disappointment, as I say, is quite understandable, especially in light of the proceedings as to other persons in the case. But he nonetheless has the criminal history category 3. Therefore, I do rule in [21] accordance with the tentative ruling and adopt the probation officer's recommendation.

I will proceed to sentence defendant in accordance with that recommendation and we will, of course, be relating back his sentence from the time of his incarceration, which was May 13, 1999.

In addition, the Court will advise the defendant of his right to appeal in light of the fact that the sentence came out at offense level 29 rather than 27.

Finally, we will grant the defendant's request to recommend placement in a Southern California facility for the reasons identified by counsel.

As to the count of conviction, it is the judgment of the Court that the defendant be imprisoned for a term of 120 months, that is on Count One.

He is not required to pay any fines because he does not have the ability to pay a fine.

There is a $100 special assessment which is mandatory and which is ordered to be paid forthwith.

Upon defendant's release from custody, he is placed on five years of supervised release. He shall comply with the rules and regulations of the Probation Office and General Order 318.

He is ordered to participate in outpatient substance abuse treatment and submit to drug and alcohol [22] testing as instructed by his probation officer.

He is instructed to abstain from using illicit drugs, using alcohol, and abusing prescription medications during the period of supervision.

During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment.

Condition 4, the defendant shall comply with the rules and regulations of the Immigration and Naturalization Service, I.N.S., and if deported from this country, either voluntarily or involuntarily, not to reenter the United States illegally.

Defendant is not required to report to the Probation Office while residing outside of the United States. However, within 72 hours of release from any custody or any reentry to the United States during the period of court ordered supervision, the defendant shall report for instructions to the U.S. Probation Office located in this building.

Next, the defendant shall not obtain or possess any driver's license or any form of identification in any name other than his true legal name, unless he has the prior written approval of the probation officer.

And finally, the defendant shall not use, for any purpose or in any manner, any name other than his true legal [23] name.

The Court selects the low end of the guideline range because it is recommended by the probation officer, because it is sought by defense counsel and urged by government counsel, and it is an appropriate sentence given the mandatory nature of the law involved.

I now remind the defendant that if he wishes to appeal the sentence pronounced today, that is to say, to have the reviewing court review the sentence, you must file a notice of appeal with the clerk of this Court no later than ten days from today's date. If you do not file a notice of appeal, there will be no appellate review of the Court's sentence.

Furthermore, if you are unable to hire counsel to represent you on the appeal, you may apply to the Court for appointment of counsel by submitting a financial affidavit to show that you are eligible for court appointed counsel to represent you on the appeal.

At this point, it appears that we have one count remaining.

Government counsel?

MS. LUEGE: Yes, your Honor.

The government moves to dismiss Count Two of the Indictment.

THE COURT: Count Two is dismissed as to this [24] defendant on motion of the government and in the interest of justice. And that will be the Court's order.

Is there anything else on defendant's behalf at this time, Mr. Wilke?

MR. WILKE: No, your Honor.

THE COURT: And on behalf of the government?

MS. LUEGE: No, your Honor.

THE COURT: Thank you then.

And we will go ahead and excuse Mr. Dominguez and counsel, and go on to our next case.

(Proceedings concluded.)

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. SA CR 99-67-AHS

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARLOS DOMINGUEZ, DEFENDANT

Social Security:	None
Residence:	Santa Ana Detention Center 62 Civic Center Plaza Santa Ana, CA 92703
Mailing Address:	715 W. North Gate Lane, Apt. 7 Anaheim, CA 92805

JUDGMENT AND PROBATION/
COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person, on: 3/13/00

Month / Day / Year

COUNSEL:

__ WITHOUT COUNSEL

However, the court advised defendant of the right to counsel and asked if defendant desired to have counsel appointed by the Court and defendant thereupon waived assistance of Counsel.

X WITH COUNSEL: Craig Wilke, DFPD

PLEA:

X GUILTY, and the Court being satisfied that there is a factual basis for the plea.

__ NOLO CONTENDERE — NOT GUILTY

FINDING:

There being a verdict of X GUILTY on __, defendant has been convicted as charged of the offense(s) of:
21 USC 846: Conspiracy to Possess with Intent to Distribute Methamphetamine (Count 1), Class A Felony

JUDGMENT AND PROBATION/COMMITMENT ORDER:

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of:

120 months. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five years under the following terms and conditions: 1) The defendant shall comply with the rules and regulations of the U.S. Probation Office and General Order 318; 2) The defendant shall participate in outpatient substance abuse treatment and submit to drug and alcohol testing as instructed by the Probation Officer. The defendant shall abstain from using illicit drugs, using alcohol, and abusing prescription medications during the period of supervision; 3) During the period of community supervision the defendant shall pay the special assessment in accordance with this judgment. 4) The defendant shall comply with the rules and regulations of the Immigration and Naturalization Service (INS), and if deported from this country, either voluntarily or involuntarily, not reenter the United States illegally. The defendant is not required to report to the Probation Office while residing outside the United States; however, within 72 hours of release from any custody or any reentry to the United States during the period of Court ordered supervision, the defendant shall report for instructions to the U.S. Probation Office, located at: Ronald Regan Federal Building and United States

Courthouse, 411 West Fourth Street, Suite 4170, Santa Ana, California 92701-4597. 5) The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name other than the defendant's true legal name, without the prior written approval of the Probation Officer; further, the defendant shall not use, for any purpose or in any manner, any name other than his true legal name.

Pursuant to Section 5E1.2(e) of the Guidelines, all fines are waived as it is found that the defendant does not have the ability to pay a fine.

It is ordered that the defendant shall pay to the United States a special assessment of $100.00 which is due immediately.

The court recommends to the Bureau of Prisons that the defendant be incarcerated in a California institution, but only in so far as this recommendation accords with security classification and space availability.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the standard Conditions of Probation and Supervised Release set out on the reverse side of this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

_____This is a direct commitment to the Bureau of Prisons, and the Court has NO OBJECTION should the Bureau of Prisons designate defendant to a Community Corrections Center.

Signed by : District Judge /s/ ALICEMARIE H. STOTLER
ALICEMARIE H. STOTLER

It is ordered that the Clerk deliver a certified copy of the Judgement and Probation/Commitment Order to the U.S. Marshal or other qulified officer.

Sherri R. Carter, Clerk

Date/Filed 3/21/00 By /s/ D. Beard
Month / Day / Year D. Beard, Deputy Clerk

STATEMENT OF REASONS

X The court adopts the factual findings and guideline application in the presentence report.
[See attached Probation Officer's Guideline Summary from PSR]

OR

__ The court adopts the factual findings and guideline application in the presentence report except:
[See attached sheet for factual findings (different from PSR)]

Guideline Range Determined and Guideline Application by the Court (when different from PSR):

Total Offense Level: 29

__ Adjustments made to offense characteristics: _____;

Criminal History Category: III

__ Adjustments made to criminal history: _____;

Imprisonment Rage: 120 to 135 months

Supervised Release Range: 5 years

Fine Range: $ 15,000 to $ 4,000,000

X Fine is waived or is below the guideline range, because of defendant's inability to pay.

Restitution: $ N/A

____Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

____For offenses that require the total amount of loss to be stated, pursuant to Chapter 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the

payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

____ Partial restitution is ordered for the following reasons(s): _____.

Sentences within the Guideline Range

X The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines. OR

____ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s): _____; OR

Departures: The sentence departs from the guideline range:

A. ____ upon motion of the government, as a result of defendant's substantial assistance.

__ Offense Levels/Criminal History Category(ies) as recommended by government;

__ Offense Levels/Criminal History Category(ies) because:

B.____ for the following reason(s):_____.